

# **A LEGAL HANDBOOK FOR WOMEN IN NEW HAMPSHIRE**



STATE OF NEW HAMPSHIRE  
COMMISSION ON THE STATUS OF WOMEN

**2004**

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**The New Hampshire Commission on the Status of Women** is a non-profit, non-partisan state agency established by the New Hampshire legislature in 1971 with the following legislative mandates (per RSA 19-B):

- I. Stimulate and encourage throughout the state study and revision of the statutes relative to women;
- II. Recommend methods of overcoming discrimination against women in public and private employment and civil and political rights;
- III. Promote more effective methods for enabling women to develop their skills and continue their education; and
- IV. Secure, so far as possible, appropriate recognition of women's accomplishments and contributions to the state.

The Commission is comprised of 15 members who are appointed by the Governor and Executive Council to two, three-year terms. Two full time staff people, the Executive Director and Program Assistant, manage the Commission office and all ongoing projects.

Additional copies may be obtained on the Commission website, [www.nh.gov/csw](http://www.nh.gov/csw), or by contacting the Commission office.

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**COPIES OF THE LEGAL HANDBOOK MAY BE  
DOWNLOADED AT [WWW.STATE.NH.US/CSW](http://WWW.STATE.NH.US/CSW)**

# PREFACE

**A LEGAL HANDBOOK FOR WOMEN IN NEW HAMPSHIRE** is designed to provide the women of New Hampshire with information about state and federal laws related to:

- ▶ Education
- ▶ Employment
- ▶ Housing
- ▶ Sexual violence
- ▶ Family law
- ▶ Criminal law

An extensive **Resource Directory** provides information on low-cost and pro bono legal services, a listing of New Hampshire superior, district, and family courts, and contact information for other useful agencies and organizations. A glossary of terms, found at the back of the Handbook, provides an easy-to-use reference for unfamiliar legal terms. Terms in **bold** throughout the Handbook are defined in the **Glossary**.

The goal of the Handbook is to provide basic knowledge of the law to women in the state. It is meant to serve as a starting point for women who need to take legal action for themselves or for their families. No special legal training is required to use this Handbook.

**WHILE THE HANDBOOK MAY CONTAIN ANSWERS TO LEGAL QUESTIONS, IT IS NOT A COMPLETE GUIDE TO THE LAW, AND IT WILL NOT REPLACE THE SERVICES OF A LAWYER. PLEASE SEEK LEGAL ADVICE FOR YOUR PARTICULAR SITUATION.**

The Handbook has been revised this year partly to recognize and incorporate certain issues that are relevant and important to immigrant women. **Immigrant women** are women from other countries who have entered the United States. Immigrants can be documented or undocumented (see **Glossary** for more information). The Handbook attempts to address issues facing women from both perspectives.

The material in this Handbook was current as of January 2004. Changes in legislation can occur at any time. Please contact the agencies involved if you have any questions about the material or to verify that the laws described in this Handbook have not changed. New Hampshire statutes also are available at the New Hampshire state website at [www.state.nh.us](http://www.state.nh.us).





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## **DIRECTORY OF NEW HAMPSHIRE**

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# **CHAPTER 1. EQUAL PROTECTION UNDER THE LAW**

Equality of rights under the law shall not be denied or abridged by this state on account of race, religion, color, sex, or national origin.

## **NEW HAMPSHIRE STATE CONSTITUTION, ARTICLE 2**

June 2, 1784. Amended 1974

The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, religion, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. [Sexual orientation added in 1999 as a protected category]

## **NEW HAMPSHIRE LAW AGAINST DISCRIMINATION**

Creation of the New Hampshire Commission for Human Rights  
under RSA 354A:1

All persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire without being subject to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, or disability.

## **NEW HAMPSHIRE CIVIL RIGHTS ACT**

RSA 354-B:1



## CHAPTER 2. EMPLOYMENT

### ❖ FORMS OF EMPLOYMENT DISCRIMINATION

Unlawful employment discrimination occurs when an individual is denied employment or is harassed in an employment setting based on sex, race, religion, color, marital status, physical or mental disability, pregnancy, age, national origin, or sexual orientation. For example, not being hired because the employer prefers a younger looking person to do the job or firing or forcing a worker to retire because he or she is “over the hill” may be examples of age discrimination. Women can be discriminated against if they receive less pay because of their sex, or if they are not hired, or are fired, because they are pregnant.

A number of state and federal laws prohibit employment discrimination. At the federal level, employment protection laws are overseen by the **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**. At the state level, discrimination claims are handled by the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**.

- ▶ Title VII of the **CIVIL RIGHTS ACT OF 1964** prohibits employment discrimination based on sex, race, color, religion, or national origin.
- ▶ New Hampshire state law **RSA 354-A:1** includes these categories as well as sexual orientation, marital status, age (all ages), and disability.
- ▶ The **AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967** (ADEA) protects individuals who are forty (40) years of age or older.
- ▶ Title I and Title V of the **AMERICANS WITH DISABILITIES ACT OF 1990** (ADA) prohibit employment discrimination against qualified individuals with disabilities in the private sector and in state and local government.
- ▶ Sections 501 and 505 of the **REHABILITATION ACT OF 1973** prohibit discrimination against qualified individuals with disabilities who work in the federal government.
- ▶ **THE CIVIL RIGHTS ACT OF 1991**, among other things, provides monetary damages in cases of intentional employment discrimination.

Under these laws, it is illegal to discriminate in any aspect of employment, including:

- ▶ Hiring and firing;
- ▶ Compensation, assignment, or classification of employees;
- ▶ Transfer, promotion, layoff, or recall;
- ▶ Job advertisements;
- ▶ Recruitment;
- ▶ Testing;
- ▶ Use of company facilities;
- ▶ Training and apprenticeship programs;
- ▶ Fringe benefits;
- ▶ Pay, retirement plans, and disability leave;
- ▶ Other terms and conditions of employment, including Worker’s Compensation;
- ▶ Harassment on the basis of race, color, religion, sex, national origin, disability, age, marital status, or sexual orientation;

- ▶ Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- ▶ Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, ethnic group, marital status, sexual orientation, or disability;
- ▶ Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination based on an individual's participation in schools or places of worship associated with a racial, ethnic, or religious group; and
- ▶ Employment decisions based on pregnancy.

## **NATIONAL ORIGIN DISCRIMINATION**

It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. For example, a rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences of violating the rule.

The **IMMIGRATION REFORM AND CONTROL ACT** (IRCA) of 1986 requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only from individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA. In order to be non-discriminatory, verification must be obtained from all applicants and employees. Employers who impose citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.

Additional information about IRCA may be obtained from the **OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES** at **800-255-7688** (voice), **800-237-2515** (TTY for employees/applicants), or **800-362-2735** (TTY for employers) or at [www.usdoj.gov/crt/osc](http://www.usdoj.gov/crt/osc).

## **DISABILITY DISCRIMINATION**

An individual with a disability under the **AMERICANS WITH DISABILITY ACT** (ADA) is a person with a physical or mental impairment that substantially limits one or more major life activities that an average person can perform with little or no difficulty. Such activities include walking, breathing, seeing, hearing, speaking, learning, and working. The ADA protects employment rights for these individuals.

- ▶ If an individual with a disability satisfies all skill, experience, education, and other job-related requirements of employment, it is illegal for that person to be dismissed or not hired solely on the basis of a disability.
- ▶ Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability, nor may a job offer be contingent upon the results of a medical examination that is not job-related, consistent with business necessity, or required of all entering employees in the same job category.

- ▶ Employers are required by the ADA to make reasonable accommodations upon request so that a person with a disability may apply for a job, perform job functions, or enjoy the benefits and privileges of employment that are enjoyed by people without a disability.
- ▶ An employer is not required to make such accommodations if they impose an undue hardship on the operation of the employer's business in terms of cost, difficulty, and production.

## AGE DISCRIMINATION

The **AGE DISCRIMINATION IN EMPLOYMENT ACT** (ADEA) and New Hampshire law **RSA 354-A** ban discrimination in employment based on age. Some specific examples follow.

- ▶ Job notices or advertisements include statements or specifications of age preference and limitations. An age limit may be specified only in the rare circumstance where age has been proven to be a **bona fide occupational qualification (BFOQ)**.
- ▶ An apprenticeship program, including a joint labor-management apprenticeship program, discriminates on the basis of age.
- ▶ Older employees are denied benefits. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

In addition, under New Hampshire law (**RSA 354-A**), employment discrimination against persons of any age, including minors, is unlawful, subject to specific health and safety regulations to protect minors.

## SEX DISCRIMINATION

**TITLE VII OF THE CIVIL RIGHTS ACT** and New Hampshire law **RSA 354-A** forbid sex discrimination in employment. Some specific examples of the broad provisions of the law follow.

- ▶ **PREGNANCY BASED DISCRIMINATION** provisions stipulate that pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.
- ▶ **SEXUAL HARASSMENT** provisions prohibit practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same-sex harassment.  
**NOTE: THE "HOSTILE ENVIRONMENT" STANDARD ALSO APPLIES TO HARASSMENT ON THE BASES OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, AGE AND DISABILITY.**
- ▶ The law prohibits any adverse employment decisions based on sex.

## PREGNANCY DISCRIMINATION

Below are some commonly asked questions about the rights of pregnant employees. For more information on pregnancy discrimination in employment, contact the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** at **603-271-2767**.

### Is a pregnant woman entitled to maternity leave?

Yes. Employers subject to these laws must grant a female employee leave for the period of time she is physically disabled due to pregnancy, childbirth or related medical conditions.

**Are all employees covered by this legislation?**

Employees working for companies with six (6) or more employees (full or part-time) usually are covered. Call the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** to determine if these laws cover your employer.

**Is there a set period of time for maternity leave?**

No. There is no set period of time for maternity leave. It is based on the period of disability as determined by a physician, usually the employee's personal doctor.

**Is the employee entitled to full pay while on maternity leave?**

The general rule is that pregnancy must be treated in the same manner that the employer treats other temporary physical disabilities. Therefore, if the employer continues to pay other temporarily disabled employees while on leave, he or she must pay pregnant women. If the employer requires use of vacation or sick leave for temporary disabilities, then he or she may require the same for pregnancy.

**Is the employee entitled to her job back after she recovers from childbirth?**

When the employee is physically able to return to work, the employer must make her original job or a comparable position available to her, unless business necessity makes this impossible or unreasonable.

**If another employee fills the position while the original employee is on maternity leave and the employer prefers the temporary replacement, can the employer refuse to provide the original job for the returning employee?**

No. Any change in position for the returning employee must be made for reasons of business necessity. An employer's preference for one employee over the other cannot be a factor in this decision.

**Can an employee be laid off or fired while pregnant or on maternity leave?**

No. An employee cannot be laid off or fired while pregnant or on leave for reasons related to her temporary disability. However, an employee, while pregnant or on maternity leave, is not immune from a general and legitimate lay off of employees.

**At what time in the pregnancy must the employee stop working?**

An employee can work until she physically is unable to perform her job.

**If an employee experiences morning sickness or another related physical condition due to her pregnancy, is she permitted to take leave during this time and then return to work for the remaining period of pregnancy?**

Yes. An employee may need temporary leave in the early stages of the pregnancy and then return to work until the end of the pregnancy.

**Must an employer provide health insurance coverage for pregnancy, childbirth and related medical conditions?**

If an employer provides health insurance coverage for temporary disabilities, coverage also must include pregnancy, childbirth and related medical conditions.



If the particular policy purchased by the employer excludes pregnancy, the employer will be considered to be self-insured regarding pregnancy and thus be responsible for all pregnancy-related costs equal to costs covered by the policy for other temporary physical disabilities.

**Must an employer provide health insurance coverage for dependents of employees for pregnancy related conditions?**

An employer must provide the same level of coverage for pregnancy related conditions of dependents that is provided for other medical conditions. This level of coverage does not have to be as high as employee coverage.

**If an employer provides fringe benefits for employees on disability leave, such as shorter returning hours, continued salary or others, must they be provided to the pregnant employee?**

Yes. An employer must provide the same benefits to those on leave for pregnancy related conditions as for other reasons related to short-term disability.

**Is the employer required to grant leave for the purposes of childcare and bonding?**

No. The required leave is for the period of disability. If an employer permits childcare leave, it must be granted equally to both men and women employees.

**Can an employee collect worker's compensation or unemployment compensation when out of work due to pregnancy?**

No. Pregnancy is not covered by worker's compensation or unemployment compensation benefits in the state of New Hampshire.

## **SEXUAL HARASSMENT**

Like pregnancy discrimination, sexual harassment can be a discriminatory employment practice and is prohibited by both federal and state law. Sexual harassment can take many forms, including requests for sexual favors, *unwelcome* sexual advances, or other conduct of a physical, verbal or visual nature that is *unwelcome* and offensive. It can be a supervisor who requires sexual activity in order to keep a job or to receive a promotion. It can come from co-workers who create a **hostile working environment** by making suggestive or demeaning comments; displaying sexual objects or pictures; telling dirty jokes; or touching, patting, or pinching you. The gender or sexual orientation of the person harassing and the person being harassed is not the determining factor.

For more information about sexual harassment, contact the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** at **(603) 271-2767**. Below are some commonly asked questions about sexual harassment in the workplace.

**How do you know if you are being sexually harassed?**

Sexual harassment exists particularly when one or more of the following conditions are met:

- ▶ You are forced to deal with the harassment in order to get a job;
- ▶ Your giving in to or rejecting the harassment is used to make decisions pertaining to your employment;
- ▶ The harassment interferes with your employment; or
- ▶ The conduct creates an "intimidating, hostile or offensive" work environment.

## What is sexual harassment at work?

Sexual harassment can include, but is not limited to:

- ▶ Whistling or lewd gestures;
- ▶ Deliberate bumping or leaning against a person;
- ▶ Comments about your body;
- ▶ Sexual notes, phone messages, email messages, graffiti, or gossip about another person;
- ▶ Inappropriate touching or grabbing of clothing;
- ▶ Demands for dates or sexual acts, or threats for not complying with the demands;
- ▶ Gay bashing;
- ▶ Harassment through the Internet or phone system;
- ▶ Sending or leaving another person pornographic material; or
- ▶ Exposure of him or herself.

## What should you do if you believe you are being sexually harassed?

There are several steps you can take if you believe you are being sexually harassed.

- ▶ You have the option to let the harasser know that the conduct is offensive and to demand that it stop. You can do this in writing if you are uncomfortable doing it in person.
- ▶ If this does not help, or is not a step you feel comfortable taking, **REVIEW THE COMPANY POLICY ON SEXUAL HARASSMENT AND FOLLOW ITS GRIEVANCE PROCEDURE AS OUTLINED. THE COMPANY'S POLICY SHOULD TELL YOU WHO IN THE COMPANY TO NOTIFY IN THE EVENT YOU EXPERIENCE SEXUAL HARASSMENT.**
- ▶ Remember that sexual harassment is a form of illegal employment discrimination under state and federal law. If the suggestions above are not effective, you can file a formal employment discrimination complaint.

## ❖ FILING A COMPLAINT OF EMPLOYMENT DISCRIMINATION

If you feel that you have been discriminated against or sexually harassed under state or federal law, you can file a complaint. You should note that **retaliation** against an employee who complains in good faith is illegal. Therefore, you should document any adverse actions taken as a result of your complaint.

- ▶ **Write down what happened.** Keep a personal journal of all that happens. After each incident, write down the date, day, time, who did it, what he or she did and where it happened. Write down how you felt, such as, "I was depressed," or "I was not able to concentrate on my work." Were you discriminated against based on your sex, pregnancy, race, religion, or something else?
- ▶ **Talk to the person in charge.** Some companies and organizations have specific policies that deal with discrimination and unlawful harassment. Review the company's policy and follow its grievance procedures. Keep a log of all conversations with supervisors. If you are employed by a small busi-

ness in which your boss is the person discriminating against you, and in which there is no one else to whom to report the situation, contact the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** at **603-271-2767** or the **EEOC** at **800- 669-4000** or **617-565-3200**.

- ▶ **Continue to do a good job at work.** It is important that the person harassing or discriminating against you does not have any other reasons to explain his or her actions. Keep a journal of the work you perform. Keep copies of performance evaluations to show that you do a good job at work. The harasser may question your job performance in order to defend his or her own behavior.
- ▶ **Ask any witnesses to give you a statement,** in writing or on tape, of what they saw and heard. Make sure they are as detailed as possible.
- ▶ **Save any notes, messages, gifts, posters, and answering machine tapes** that you have received from the person harassing you. Even if the items are disgusting or upsetting, it is important that you keep them for evidence.
- ▶ **Get emotional support** from family, friends, a crisis center advocate, a therapist, or clergy. This often can be the most important, and sometimes most difficult, action you take. Some people feel depressed or get physically ill as a result of discrimination. New Hampshire law (**RSA 173-C**) makes getting help safer for you. The law states that information shared with a **crisis center advocate** shall remain confidential unless the crisis center has received written permission from you. This means you can disclose information about your situation to a crisis center advocate and receive help and support without any of the conversation being revealed to the government, your harasser, or any other third party. **Please note that crisis center advocates are required by law to report any known or suspected incidences of child abuse to authorities.**

### **Who Do Equal Employment Opportunity Laws Cover?**

**TITLE VII** and the **ADA** cover all private employers, state and local governments, and educational institutions that employ fifteen (15) or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.

**ADEA** covers all private employers with twenty (20) or more employees, state and local governments (including school districts), employment agencies and labor organizations.

Title VII and the ADEA also cover the federal government. In addition, the federal government is covered by the **REHABILITATION ACT OF 1973**, as amended, which incorporates the requirements of the ADA. However, different procedures are used for processing complaints of federal discrimination. For more information on how to file a complaint of federal discrimination, contact the EEOC office of the federal agency where the discrimination occurred.

**RSA 354-A**, New Hampshire's anti-discrimination law, covers employees working for employers with six (6) or more employees (full or part-time). Some non-profit employers are exempt from these laws. Call the NEW HAMPSHIRE COMMISSION ON HUMAN RIGHTS to determine if your employer is covered.

## Who Can File a Charge of Discrimination?

Any individual who believes that his or her employment rights have been violated may file a charge of discrimination. In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity.

## How Do I File a Discrimination Claim?

- ▶ Claims made under the state law may be filed with the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** at **603-271-2767**.
- ▶ Claims made under the federal law may be filed by mail or in person at the nearest **EEOC** office. Individuals may consult their local telephone directory or call **800-669-4000** (voice) or **800-669-6820** (TTY) to contact the nearest EEOC office for more information on specific procedures for filing a charge.

*Individuals who need an accommodation in order to file a charge (for example, sign language, interpreter, print materials in an accessible format) should inform the EEOC field office or the COMMISSION FOR HUMAN RIGHTS so appropriate arrangements can be made.*

- ▶ Federal employees or applicants for employment should see the fact sheet about **FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESSING**, found at [www.eeoc.gov](http://www.eeoc.gov).
- ▶ To file a complaint against a state or local government employer with a practice or pattern of illegal discrimination, contact the Employment Litigation Section in the **OFFICE OF CIVIL RIGHTS** with the **U.S. DEPARTMENT OF JUSTICE** at **202-514-3831**.

*In addition,*

- ▶ Individuals with a disability also should contact the **DISABILITY RIGHTS CENTER** at **800-834-1721** or **603-228-0432**, which represents individuals with disabilities in legal and administrative matters that arise because of their disabilities.
- ▶ If your employer requires specific documents, such as a green card, or rejects such documents only from applicants of certain national origins, you also can contact the **OFFICE OF SPECIAL COUNSEL** at the **U.S. DEPARTMENT OF JUSTICE** at **800-255-7688**.

## What Information Is Needed To File A Charge?

- ▶ The complaining party's name, address, and telephone number;
- ▶ The name, address, and telephone number of your employer and number of employees, if known;
- ▶ A short description of the incident(s); and
- ▶ The date(s) of the incident(s).

## What Are The Time Limits For Filing A Charge?

Be aware that the **statute of limitations** is short. Under New Hampshire law, you have only one hundred and eighty (180) calendar days from the last incident to file a formal complaint. If your employer has more than fifteen (15) employees, federal law also covers it. In that case, you have up to three hundred (300) days to file.

All laws enforced by EEOC require filing a charge with EEOC before a private lawsuit may be filed in court.

## What Remedies Are Available When Discrimination Is Found?

Remedies are available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect. Some specific examples follow.

- ▶ Back pay
- ▶ Hiring
- ▶ Promotion
- ▶ Reinstatement
- ▶ Front pay
- ▶ Reasonable accommodation
- ▶ Other actions that will make an individual “whole” (in the condition she or he would have been but for the discrimination)
- ▶ Attorney fees
- ▶ Expert witness fees
- ▶ Court costs

Under most EEOC-enforced laws, compensatory and punitive damages also may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference. Punitive damages are not available against federal, state or local governments.

In cases concerning reasonable accommodation under the ADA, compensatory or punitive damages may not be awarded to the charging party if an employer can demonstrate that “good faith” efforts were made to provide reasonable accommodations.

## TAKING CARE OF YOURSELF

If you feel you are being sexually harassed or discriminated against, do not blame yourself. It is not your fault. Many people hope that ignoring the problem will make it disappear. Rarely does that happen. Discrimination and harassment can be emotionally damaging. It is important to take care of yourself.

- ▶ **Know that you have done nothing to provoke or cause the harassment.** What is happening to you is not your fault and is not because of anything that you have or have not done.
- ▶ **Join a support group.** Local crisis centers can assist you in locating a support group in your area.
- ▶ **Get emotional support from family and friends.** Keep in touch with friends who are supportive and understanding. Tell someone about each encounter with the harasser. You also can call your local crisis centers for support twenty-four (24) hours a day, three hundred sixty five (365) days a year.
- ▶ **You may experience stress and trauma and may want to seek professional assistance.** You may begin to experience things like rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping and eating patterns, exhaustion, or frequent crying spells. You are not going crazy. Your body and mind are reacting to the stress caused by the harassment. Talking to someone who is trained to work with victims and survivors may help you deal with the experience.

## ❖ OTHER IMPORTANT EMPLOYMENT LAWS

### THE EQUAL PAY ACT

Both the state and federal **EQUAL PAY ACT** (EPA) protect men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. The **FEDERAL EQUAL PAY ACT** and **RSA 275:37** prohibit discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

The EPA covers all employers who are covered by the **FEDERAL WAGE AND HOUR LAW (THE FAIR LABOR STANDARD ACT)**. Virtually all employers are subject to the provisions of this Act. The law includes the following specific provisions.

- ▶ Employers may not reduce wages of either sex to equalize pay between men and women.
- ▶ A violation of the EPA may occur where a different wage was or is paid to a person who worked in the same job before or after an employee of the opposite sex.

Unlike other laws enforced by the EEOC, the EQUAL PAY ACT does not require filing a charge with EEOC before a private lawsuit may be filed. State EQUAL PAY ACT claims are filed with the **NEW HAMPSHIRE DEPARTMENT OF LABOR WAGE AND HOUR DIVISION (603-271-1492)** or in Superior Court (see **RESOURCE DIRECTORY**). Federal EQUAL PAY ACT claims may be filed with the **EEOC (800-669-4000 or 617-565-3200)** or in federal court (see **RESOURCE DIRECTORY**). Wage discrimination charges must be filed within one year of the alleged violation.

### FAMILY AND MEDICAL LEAVE ACT

The **FAMILY AND MEDICAL LEAVE ACT** (FMLA) of 1993 is a federal law that allows women and men, who are employed by companies with fifty (50) or more employees, to take up to twelve (12) unpaid weeks a year for the following reasons:

- ▶ Employee's serious health condition which renders the employee unable to perform an essential function of his or her position;
- ▶ To care for a child, spouse or parent with a serious medical condition; or
- ▶ Following childbirth, adoption or placement of a foster child.

Employees must have worked for the employer for at least a total of 1,250 hours (seven and a half (7.5) months) during the past twelve (12) months preceding the request for leave. Leave can be taken all at once or spread throughout the year. However, there is no wage replacement provided under FMLA and employers may require employees to use up accrued vacation and sick time. Employees should provide employers notice of the need for family and medical leave at least thirty (30) days in advance of foreseeable events and as soon as possible for unforeseeable events (usually within one (1) to two (2) business days of learning of the need for a leave).

When an employee returns from FMLA, the employer must reinstate the employee to the same position, if it is available, or to an equivalent position for which the employee is qualified with the same pay, benefits, and terms and conditions for employment.

Under certain limited circumstances, the employer may not be required to restore an employee to his or her position after termination of leave if the employee is among the highest paid ten (10) percent of employees of the employer.

It is important to note that the rights provided by the FAMILY AND MEDICAL LEAVE ACT *are in addition to and do not replace* the rights that are provided under New Hampshire state law to women who are pregnant as outlined earlier in this chapter, or any other rights your employer may provide by contract, policy, or otherwise.

The **U.S. DEPARTMENT OF LABOR** enforces the FAMILY AND MEDICAL LEAVE ACT. To file an FMLA complaint, individuals should contact the **WAGE AND HOUR DIVISION, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR** at **603-271-1492**.





## CHAPTER 3. EDUCATION

### ❖ FORMS OF EDUCATIONAL DISCRIMINATION

Unlawful discrimination in education occurs when an individual is denied access to education or is harassed in an educational setting based on sex, race, religion, color, marital status, physical or mental disability, pregnancy, age, national origin, or sexual orientation. A number of state and federal laws prohibit discrimination and harassment in education. These laws cover any school receiving federal funds, including private and parochial institutions, colleges and universities.

- ◆ Title VI of the **CIVIL RIGHTS ACT OF 1964** prohibits discrimination in schools based on race, color, and national origin.
- ◆ Title IX of the **EDUCATIONAL AMENDMENTS OF 1972** prohibits discrimination based on sex in any educational program or activity receiving federal assistance.
- ◆ The **INDIVIDUALS WITH DISABILITIES EDUCATION ACT OF 1997** (IDEA) provides for equal access to education for people with disabilities; Section 504 of the **REHABILITATION ACT OF 1975** prohibits discrimination based on physical or mental ability in programs or activities receiving federal funds.
- ◆ **RSA 186:11** mandates that the Commissioner of Education, on behalf of the State Board of Education, ensures protection from discrimination in public schools on the basis of sex, race, religion, color, marital status, national origin, or disability.
- ◆ **RSA 193-F:3 (PUPIL SAFETY AND VIOLENCE PREVENTION ACT OF 2000)** mandates that each school board adopts a pupil safety and violence prevention policy that addresses pupil harassment, or “bullying.”

### NATIONAL ORIGIN DISCRIMINATION

It is illegal to discriminate in education against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. National origin discrimination includes discrimination against persons with limited-English proficiency (LEP).

If you (as a student) or your child has limited English proficiency (LEP), the law requires the school district to provide alternative language services to enable the student to acquire proficiency in English. The school district also must provide the student with meaningful access to the same education available to all other students, including special education and related services as well as honors courses and advanced placement classes.

Children who are non-citizens have a constitutional right to receive public education through grade twelve (12), including access to special education programs, on the same basis as citizens. This includes individuals who are permanent residents as well as those who are documented and undocumented immigrants.

It is illegal to discriminate against a student based on their residency status. You should contact immediately an immigration advocate if your child’s school:

- ▶ Asks about your child’s immigration status or requests documentation;
- ▶ Denies admission to your child during initial enrollment or at any other time on the basis of residency status;

- ▶ Treats your child differently from other children on the basis of his or her residency status; or
- ▶ Requires you or your child to apply for a social security number.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch or breakfast program for a student need only state on the application that they do not have a social security number. For more information, contact the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** or the **PARENT INFORMATION CENTER** at **800-232-0986**.

## **DISABILITY DISCRIMINATION**

The **INDIVIDUALS WITH DISABILITIES EDUCATION ACT** (IDEA) requires that school districts provide a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) based on a team-designed Individualized Education Program (IEP) for all eligible students with educational disabilities. IDEA also requires that parents be given the opportunity to be involved in the educational planning of their disabled children. The school district, therefore, must make a reasonable effort to ensure that parents understand, and are able to participate in, any group decisions relating to the educational placement of the student, including arranging for an interpreter for those whose native language is not English.

In New Hampshire, parental written consent is required for student evaluations, determining or changing a disability classification, the IEP, placement, and changing the nature or extent of a child's special education or related services. If a parent fails to respond to a request for consent, the school district can implement the proposed changes, as long as it took reasonable measure to obtain parental consent.

A school district should evaluate a child, who may be LEP, by evaluating the child's proficiency in English as well as in his or her native language to distinguish language proficiency from disability needs. These evaluations should be selected and administered non-discriminatorily and in the child's native language or other mode of communication unless it is not possible to do so. If parents disagree with the results of a school's evaluation, they may request an independent evaluation at public expense. Students must be reevaluated by the school district at least once every three (3) years, or more frequently if the parent or teacher requests it.

Once a child has an IEP, it must be reviewed by the school district annually and be in place at the beginning of each school year. Among the many components of an IEP is an explanation of how parents will be informed regularly of their child's progress. In addition, parents must be given a ten (10) day advance notice of any meetings called by the IEP team. The notice must indicate the meeting's purpose, time, location, and expected participants. Parents may invite other individuals to the meeting who have special expertise or knowledge about the child.

New Hampshire rules outline clear timelines for each step of the special education process—from identification, to evaluation, to placement. For more information on the special education process, contact the **DISABILITY RIGHTS CENTER** at **800-834-1721** or **603-228-0432** or the **PARENT INFORMATION CENTER** at **800-232-0986**.

Procedural safeguards provide for resolution of disputes, first by informal methods and then, if this is not successful, through complaint and investigation. For

complaints that a school has violated state or federal requirements, including not following an IEP, you can file with the **NEW HAMPSHIRE DEPARTMENT OF EDUCATION**, IDEA team at **603-271-3741**. The complaint will be investigated and appropriate steps ordered to remedy any violations.

## **SEX DISCRIMINATION**

**TITLE IX OF THE EDUCATION AMENDMENTS OF 1972** was the first comprehensive federal law to prohibit sex discrimination in educational institutions that receive federal funding. Title IX reads:

*“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”*

Title IX covers all aspects of education, including admission, recruitment, educational programs and activities, facilities and housing, scholarships, counseling, course offerings and access, financial aid, athletics, health insurance benefits and services. It also protects against discrimination based on the marital and parental status of students. These rules apply to any school receiving federal funds.

### **Recruitment**

All classes, except those involving sex education and contact sports, should be open to both sexes. These exceptions may be taught separately to each gender as long as the same opportunity is offered to both sexes. A school district must not use any test or criterion that tends to lead one sex into a program or activity and lead the other sex away, thus causing a disproportionate enrollment.

### **Athletics and Physical Education**

It is the school district's responsibility to see that equal opportunity and equal funding are provided for both sexes in interscholastic, intercollegiate, club, or intramural athletics. Equal equipment, supplies, facilities, number of games, practice times, travel allowance, and compensation to coaches are necessary under Title IX. Separate teams for contact sports or in sports where competitive skill is involved are allowed.

### **Counseling and Guidance**

Schools may not discriminate against any person on the basis of sex in the counseling or guidance of students. Career information and career choice should be based on a student's abilities and interests, not the student's sex. Financial assistance, awards, scholarships, and testing must show equal opportunity to both sexes. In addition, schools may not discriminate on the basis of sex in providing medical, hospital, accident, life insurance, services, or policies to any student.

### **Marital Status**

Schools may not penalize students because they are married. Also, schools cannot require married students to use a specific name. Married persons have the same rights as unmarried persons and may not be excluded from activities and full participation in school. Also, Title IX states that a rule may not be established concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

## **Pregnancy**

Title IX states no student may be discriminated against or excluded from school, programs, or activities on the basis of pregnancy or related conditions unless the student voluntarily requests to participate in a separate activity.

Although not specifically covered by Title IX, the following areas are central to a school environment free of gender bias:

## **Textbook and Curricular materials**

Sexual stereotyping and sexual bias often occur in school activities, textbooks, classroom materials, and testing. The choice of textbooks and materials is made by teachers, principals, and local school boards. Title IX does not apply to this area. However, public awareness and pressure has resulted in eliminating some sexism in textbooks. Parents should encourage schools to develop policy statements and guidelines to examine possible sex bias in textbooks and instructional materials.

## **Dress Codes**

Basically, a student has the right to wear what he or she wants, providing it is reasonable. Students have the right to freedom of expression and freedom of association. A public school cannot establish a dress code that applies to one sex and not the other. For example, a school cannot insist boys wear short hair and allow girls to wear long hair. Most dress codes must be broad and flexible to be considered legal.

## **❖ SEXUAL HARASSMENT**

**TITLE IX** defines sexual harassment and standards for schools. In addition, **RSA 186.11** requires the **NEW HAMPSHIRE STATE BOARD OF EDUCATION** (see **RESOURCE DIRECTORY**) to protect students in public schools from any form of discrimination, including sexual harassment.

Anyone can be a victim of sexual harassment in a school setting—teenagers, children, those who are physically or mentally disabled, regardless of race, sex, sexual orientation, nation of origin, or economic status. A teacher, administrator, coach, staff person or other student can unlawfully harass a student. The gender or sexual orientation of the person harassing and the person being harassed is not the determining factor. (Teachers, too, can be victims of sexual harassment. See Chapter 2 for laws relevant to harassment in an employment setting.)

## **What Is Sexual Harassment In Schools?**

Sexual harassment can take many forms, including, but not limited to:

- ▶ Whistling, cat calls, or dirty gestures;
- ▶ Deliberate bumping or leaning against another person;
- ▶ Comments about a person's body;
- ▶ Sexual phone calls, notes, messages, graffiti, or gossip;
- ▶ Inappropriate touching or grabbing of clothing;
- ▶ Demands for dates or sexual acts, or threats for not complying with the demands;
- ▶ Gay bashing;

- ▶ Harassment through the Internet;
- ▶ Sending or leaving another person pornographic material; and
- ▶ Exposure of him or herself.

If this conduct is interfering with a student's education, it may be unlawful harassment.

## **BULLYING**

Although not necessarily directed toward a person's sex, bullying is related to sexual harassment. Under New Hampshire law (**RSA 193-F:3**), each local school board is required to adopt a pupil safety and violence prevention policy that addresses "bullying." If your child tells you that he or she is being bullied at school, it is important to speak to a school official.

School employees who witness or have reliable information that a pupil has been subjected to insults, taunts or challenges, which are likely to intimidate or provoke a violent or disorderly response, must report such incident to the principal or other designee, who in turn must report the incident to the superintendent.

## **❖ FILING A COMPLAINT OF EDUCATIONAL DISCRIMINATION**

In accordance with federal and state law, each district-level school board is required to adopt a policy that guarantees an environment free of sexual harassment. Further, state law requires all school boards to adopt a rule prohibiting unlawful discrimination in educational programs and activities on the basis of sex, race, age, religion, color, marital status, national origin or disability. The school's anti-discrimination and sexual harassment policies must be publicized to students, teachers, and parents.

Additionally, each school district is required to appoint a committed individual as **Title IX Coordinator** to investigate gender discrimination complaints. The name of the Title IX Coordinator must be made available to the public by the local school district office and publicized to parents, students, and teachers.

If you (as a student) or your children are being sexually harassed or discriminated against by a teacher, staff member or another student, it is important to speak up. Also, you should know that you do not have to be a victim of discrimination or harassment yourself to file a complaint.

Informal methods first may be used to resolve disputes. If this is unsuccessful, the dispute may need to be resolved through complaint and investigation. Following the steps below will be helpful. If you are a student and feel uncomfortable talking about your situation alone, ask a friend, a parent or another adult with whom you feel comfortable to attend the meeting with you. If English is not your native language, or if you need other special accommodations, be sure to request that these arrangements be made.

- ▶ **Write down what happened.** Make a note of how you felt when you were harassed or discriminated against—depressed, scared, ashamed, shocked? Note details, including names of witnesses and the approximate date of the incident and if it is still occurring.

- ▶ [If the harassment or discrimination is based on your sex, contact the **Title IX Coordinator in your district.**] This person has been designated by your school district responsible for handling complaints about Title IX violations. Once notified, the **Title IX Coordinator** will begin an investigation into the complaint.
- ▶ **Contact the principal or other senior administrators as soon as possible.** A principal or senior administrator is responsible for hearing discrimination and harassment complaints not based on sex and, therefore, not covered by Title IX. This person also will be able to offer immediate remedy to an unsafe educational environment while an investigation is taking place for all complaints.

If these steps are not effective, you do have other options.

- ▶ File a complaint with the **NEW HAMPSHIRE DEPARTMENT OF EDUCATION** IDEA team at **603-271-3741** if the school has violated state or federal IDEA requirements, including not following an IEP. The complaint will be investigated and appropriate steps ordered to remedy any violations.
- ▶ File a complaint with the local school board. If you are dissatisfied with the results, file an appeal to the **STATE BOARD OF EDUCATION** at **603-271-3144**.
- ▶ File a complaint with the **U.S. DEPARTMENT OF EDUCATION** at **800-872-5327** or the **OFFICE FOR CIVIL RIGHTS** at **617-223-9662**.
- ▶ Bring a lawsuit under federal or state law.

Useful resources for advocacy and information include the **DISABILITY RIGHTS CENTER** at **800-834-1721** or **603-228-0432**, the **PARENT INFORMATION CENTER** at **800-232-0986**, and your **local crisis center** listed on the back cover of the Handbook.

## TAKING CARE OF YOURSELF

If you feel you are being harassed or discriminated against, do not blame yourself. It is not your fault. Many people hope that ignoring the problem will make it disappear. Rarely does that happen. Discrimination and harassment often can be emotionally damaging. It is important to take care of yourself.

- ▶ **Know that you have done nothing to provoke or cause the harassment.** What is happening to you is not your fault and is not because of anything that you have or have not done.
- ▶ **Join a support group.** Local crisis centers can assist you in locating a support group in your area.
- ▶ **Get emotional support from family and friends.** Keep in touch with friends who are supportive and understanding. Tell someone about each encounter with the harasser. You also can call your local crisis centers for support twenty-four (24) hours a day, three hundred sixty five (365) days a year.
- ▶ **You may experience stress and trauma and might want to seek assistance.** You may begin to experience things like rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping and eating patterns, exhaustion, or frequent crying spells. You are not going crazy. Your body and mind are reacting to the stress caused by the harassment. Talking to someone who is trained to work with victims and survivors may help you deal with the experience.

## CHAPTER 4. HOUSING

### ❖ HOUSING DISCRIMINATION

**TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968** makes it illegal to treat a person differently in housing based on race, color, national origin, disability, sex, religion, and familial status (the number and ages of children in a family). New Hampshire's fair housing law (**RSA 354-A**) also protects residents against housing discrimination based on a person's age, marital status, or sexual orientation. These laws cover housing owners, landlords, housing managers, real estate agents and others involved directly or indirectly in the rental or sale of housing or housing lots. Advertising of an available apartment, home or housing lot; the rental, sale or negotiation for the rental or sale of housing; and the provisions of home financing or real estate brokerage services all are covered by these anti-discrimination laws.

If you believe you have been a victim of housing discrimination under federal or state law, you can file a complaint with the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** at **603-271-2767** or with the **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)** at **800-669-9777**. If you need legal assistance, you can contact the **FAIR HOUSING PROJECT (FHP)** at **800-921-1115** in-state, or **603-669-4960** in Manchester, a statewide program of **NEW HAMPSHIRE LEGAL ASSISTANCE** that provides legal services to low-income residents. If you believe there is a pattern or practice of discrimination that extends beyond you as an individual, contact the **HOUSING AND CIVIL ENFORCEMENT SECTION OF HUD** at **800-669-9777**.

### ❖ TENANT RIGHTS AND RESPONSIBILITIES

As in any contractual agreement, housing leases stipulate the rights and responsibilities of the contracting parties—in this case, tenant and landlord. It is important to note, however, that no lease can override a specific provision of New Hampshire law that provides tenant protections.

**NOTE: New Hampshire state law, RSA 205-A, provides substantial additional rights to manufactured housing tenants, not covered in this chapter.**

### RIGHTS AND RESPONSIBILITIES UNDER A LEASE

Although a rental agreement can be written or oral, "lease" usually means a written rental agreement for a specific time, usually one (1) year. As long as you abide by the lease, you cannot be evicted during that year and your rent cannot be raised. However, you may be obligated to pay the rent for that entire year even if you move.

Read the lease carefully before you sign it and ask about anything that you do not understand. If rent is shared, anyone who signs the lease may have to pay the total rent, not just his or her portion. If your lease expires and you are not offered a new one, you then become a month-to-month tenant. Even then, in most situations, you cannot be evicted without good cause.

If you do not have a lease, the landlord can increase the rent but must give you written notice of increase thirty (30) days before the increase is due to take effect.

## SAFE AND SANITARY HOUSING

According to **RSA 48-A:14** landlords are required to provide safe, sanitary housing for tenants. State law sets forth the minimum standards for rental property. The following may be examples where these standards are not being met:

- ▶ Bugs, mice or rats, and the landlord is not conducting a routine inspection and extermination program;
- ▶ Internal plumbing that does not work, or a back-up of sewage caused by a faulty septic or sewage program;
- ▶ Bad wiring;
- ▶ Leaking roof or walls;
- ▶ Not enough water or the water heater is not working properly;
- ▶ Leaks in gas lines;
- ▶ Heating facilities are not properly installed, safely maintained, and in good working condition, or cannot safely and adequately heat all livable rooms and bathrooms to average temperature of at least sixty-five (65) degrees; or
- ▶ The premises are not kept at a minimum average temperature of sixty-five (65) degrees in all livable rooms when heat is included in the rent.

## MAKING A COMPLAINT ABOUT THE LACK OF SAFE AND SANITARY HOUSING

You should make all complaints and requests for repairs in writing to the landlord and keep dated copies. If the landlord fails to make proper repairs, report any serious problems to proper authorities, usually the code enforcement officer or building inspector. Report any fire hazards to the local fire chief. If the town does not address these problems, you can contact the **STATE OFFICE OF HEALTH MANAGEMENT** at **603-271-4501** or the **STATE FIRE MARSHALL** at **603-271-3294**. The landlord cannot evict you for making these complaints (see below, "Retaliatory Eviction").

## WITHHOLDING RENT

If you choose to withhold rent, it is best that you consult an attorney before doing so. Lawfully, you may withhold your rent if ALL the following conditions are met:

1. You gave your landlord notice (preferably written notice) of the violations while you were not behind in rent; AND
2. The landlord failed to take corrective actions within fourteen (14) days of your written complaint (In an emergency, you may not have to wait fourteen (14) days before you begin withholding); AND
3. Your family or guests did not cause the violation; AND
4. Extreme weather conditions did not prevent the repairs; AND
5. You did not refuse to let the landlord into your apartment to make the repairs.

If you choose to withhold rent, you must put aside the rent money withheld so that it is available to pay to the court. If the landlord tries to evict you because of non-payment of rent, and you have satisfied all of the above conditions, the court can dismiss the eviction.



## OTHER TENANT PROTECTIONS

New Hampshire law (**RSA 540-A**) prohibits a landlord from certain acts:

- ▶ Shutting off your utilities;
- ▶ Locking you out of your rented premises without a court order;
- ▶ Entering your premises without permission, except to make emergency repairs. (You should not refuse your landlord's reasonable request to enter the premises if you are given enough notice); and
- ▶ Taking any other action to force you out of your home without going through the eviction process.

If your landlord has done any of the actions listed above, you can get an order to make your landlord stop, and to award you damages, by filing a **540-A petition** at your local DISTRICT COURT (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts). You do not need a lawyer. Ask the clerk to help you. You also may want to ask for a **temporary order** if there is an immediate threat of serious harm. The court will schedule a hearing to hear both sides and then will decide if you should get damages and if the order should be continued.

## SECURITY DEPOSITS

Under New Hampshire law, a security deposit is any money that you give to your landlord other than your monthly rental payment. Even if your landlord calls the money a deposit for cleaning, pets or keys, or the last month's rent, it still is treated under the law as a security deposit. This law protects all tenants EXCEPT:

- ▶ Tenants who rent a single family home from a landlord who does not own any other rental property;
- ▶ Tenants under the age of sixty (60) who live in a building with less than six (6) apartments and whose landlord lives in the same building; and
- ▶ Tenants in business, vacation or recreational rentals.

Even if the law does not cover your tenancy, your landlord still is obligated to return your deposit after you move out, minus unpaid rent and repair costs. If your security deposit is not returned, you still may sue your landlord but may not be entitled to certain penalties provided by New Hampshire law.

Your landlord cannot require you to pay a security deposit in an amount that is greater than one month's rent or \$100.00, whichever amount is larger. **FOR EXAMPLE, ALTHOUGH A COMMON PRACTICE, IT IS ILLEGAL FOR A LANDLORD TO CHARGE FIRST AND LAST MONTH'S RENT IN ADDITION TO A SECURITY DEPOSIT.** Whenever you pay a security deposit, the landlord is required to give you a signed receipt, which must tell you in which bank your deposit is held.

You also are entitled to receive interest earned on the money in the savings account where it was deposited if your landlord holds your deposit for more than one (1) year.

When you move out, you should notify your landlord in writing of your new address as soon as possible, preferably on or before the day you move. Your landlord has thirty (30) days from the end of the tenancy to return your full deposit with any interest owed, or return your deposit minus any permitted deductions.

Your landlord is permitted to deduct the following expenses from your security deposit:

- ▶ Any rent that is still owed;
- ▶ The cost to repair any damages caused to the apartment or leased premises caused by you or your guests; and
- ▶ Your share of increases in real estate taxes (but only if a written agreement requires this).

Your landlord is required to provide you with an itemized list of any expenses deducted from your deposit and further must provide proof that the repairs, if any, have been or will be completed.

The landlord is not permitted to charge you for “normal wear and tear” to the premises. Whether or not something is considered to be “normal wear and tear” or damage depends on the facts. Worn carpeting or linoleum usually will be considered “normal wear and tear,” while broken glass and holes in walls will be considered damage.

You have five (5) days to give your landlord a list of defects and damages that were in the apartment when you moved in. Also, it is important to inspect the premises when you move out. You should make both inspections with a witness.

You may be able to sue your landlord for damages in small claims court if you do not get your security deposit within thirty (30) days. Before you file a lawsuit, write to your landlord requesting the return of your security deposit. Be sure to include your new address in your letter. Keep a copy of the letter for yourself.

If you decide to sue, call the **LEGAL ADVICE & REFERRAL CENTER** at **800-639-5290** or **603-224-3333** for more information regarding the legal process or to request informational brochures on “Tenant Rights” and “Security Deposits.” In addition, the **FAIR HOUSING PROJECT (800-921-1115** in-state or **603-669-4960** in Manchester), a statewide program of **NEW HAMPSHIRE LEGAL ASSISTANCE**, provides legal services to low-income residents for housing issues.

## ❖ THE EVICTION PROCESS

### REASONS FOR EVICTION

In most rental situations, your landlord must prove good cause to evict you; you cannot be evicted without a reason. Lawful reasons to evict must be stated on the eviction notice. Some specific examples follow.

- ▶ Non-payment of rent
- ▶ Substantial damage to the premises
- ▶ Violation of the lease
- ▶ Behavior of the tenant or guests that adversely affects the health or safety of other tenants or the landlord
- ▶ Failure of the tenant to accept suitable temporary relocation due to the abatement of lead paint hazards
- ▶ Repairs for a lead hazard that will take more than thirty (30) days or will be more than a temporary measure, or that, after the repairs, the unit will be no longer rented
- ▶ Other good cause

## EXCEPTIONS TO GOOD CAUSE EVICTION

If you live in one of the types of properties set forth below *and* you do not have a lease, your landlord does not need good cause to evict you. However, even if you do live in such a property, the landlord still must go through all the steps of the eviction process.

- ▶ The rental unit is a single-family house and the owner does not own more than three (3) single-family houses at one time.
- ▶ The rental unit is in an owner-occupied building containing a total of four (4) units or fewer.
- ▶ The rental unit is in a vacation or recreational dwelling, rented during the off-season for non-recreational purposes.
- ▶ The rental unit is a single-family house acquired by a bank or other mortgagor through foreclosure.

## RETIALIATORY EVICTIONS

It is unlawful for a landlord to evict you for reporting housing code violations, filing a fair housing complaint, or organizing a tenant association. Evicting a tenant when he or she lawfully is withholding rent as described in the tenant rights section above also is a form of retaliatory eviction and is illegal. In addition, a landlord may not evict you on the basis of race, age, sex, national origin, sexual orientation, or any other protected category.

## THE EVICTION PROCESS

In order to evict, a landlord must follow the correct procedure and, in most situations, must prove that there is a good cause to evict. The law requires a written notice and the opportunity for a court hearing. If a landlord fails to take the steps required by law, a tenant may request that the court dismiss the eviction.

In nonpayment evictions, a **demand for rent** is the first notice you will receive. A demand for rent will tell you how much rent you owe, and cannot ask for more rent than is actually owed. The demand must be served personally (given to you in hand) or left at your home prior to or at the same time as the “notice to quit.”

A **notice to quit** is your eviction notice. It must be in writing; be served on you personally or at your door; and state specifically the reason for the eviction. If the reason for the eviction is nonpayment, behavior adversely affecting the health and safety of other tenants or the landlord, or that you have caused substantial damage to the premises, the notice must give you at least seven (7) days to leave. In all other cases, a landlord must give you at least thirty (30) days notice to leave. Further, the notice must notify you of your right to cure, if the reason is nonpayment of rent. The **right to cure** means that you can avoid eviction by paying all of the back rent, plus \$15.00, by the date the notice to quit expires. If you pay on time, you cannot be evicted. It is important to note that you can cure only three (3) times within a twelve (12) month period.

After the notice to quit has expired and you have not left, the landlord can begin a legal action against you. In this case, a sheriff will serve a **writ**, either on you personally or at your home. Read the writ carefully. It will indicate a **return date**. If you want a hearing to challenge the eviction or to ask for more time, you must file an **appearance** and ask for a hearing before the return date.

**NOTE: the return date is not a hearing date. There will not be a hearing unless you request one from the court.**

You can obtain an **appearance** form at the DISTRICT COURT from the clerk (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts). Fill it out and leave it with the clerk. You also will want to send a copy of the form to the landlord or the landlord's attorney. After you file your appearance form, you will receive a notice letting you know the date of the hearing. If you do not file an appearance form, you will lose your eviction case and the court can issue a **writ of possession** against you three (3) days later.

You can send discovery requests to your landlord or the landlord's attorney within five (5) days following the return date on the writ. During the **discovery process**, you can find out what evidence your landlord plans to use against you so that you can prepare for the hearing. You have the right to send written interrogatories or questions about the specifics of the case. Your landlord has fourteen (14) days to respond, so you will need to ask the court in writing to postpone the hearing to give your landlord time to reply. If your landlord does not respond within fourteen (14) days, you can inform the court and ask for another postponement of the hearing to give you time to get the information.

At the hearing, the court has the power to decide who should have possession of the property and how much money is owed between you and the landlord. If the landlord has requested money damages on the writ, the hearing may result in a financial judgment that can be enforced against you if it is not paid. Therefore, if you disagree with the amount the landlord claims you owe, you should go to the hearing, even if you have already moved.

To win the right to stay in the rental property, you must convince the court:

- ▶ That the landlord does not have good cause to evict you (for more information about good cause see above); or
- ▶ In the case of non-payment of rent, that you do not owe the money or that the landlord owes you more money than you owe the landlord; or
- ▶ That the landlord did not take the proper legal steps to evict you.

For information on the hearing and the defenses that you can raise, call the **LEGAL ADVICE & REFERRAL CENTER** at **800-639-5290** or **603-224-3333** for advice or to request the informational brochure, "The Eviction Process." In addition, the **FAIR HOUSING PROJECT (800-921-1115** in-state, or **603-669-4960** in Manchester), a statewide program of **NEW HAMPSHIRE LEGAL ASSISTANCE**, provides legal services to low-income residents.

In the event that you lose at the hearing, you should ask the court to grant a **discretionary stay** at the end of your hearing. The court has the discretion to grant a stay of up to ninety (90) days, during which time the writ of possession is stayed, or delayed, by the court. You must pay weekly rent during this time and failure to make a timely payment may result in the landlord going back to the court to ask for a writ of possession.

The judge uses a variety of factors to decide whether or not to grant a stay, including:

- ▶ The difficulty you will have in moving;
- ▶ Whether your children will have to change schools;
- ▶ Your ability to pay rent during the stay;
- ▶ Whether you have a definite date for moving; and
- ▶ Whether a delay will hurt the landlord.

At the end of the stay period, the court will issue a writ of possession if you have not yet moved.

A **writ of possession** authorizes your landlord to take back possession of the property. This is the final step in the eviction process. You may receive a warning from the sheriff, and a few days later the sheriff will return to remove you from the property. It is best to remove your personal property before that happens. However, your landlord is obligated to take care of your personal property for twenty eight (28) days after you vacate the premises and cannot charge you payment for any rent or storage fees.

**NOTE: Until the writ of possession is served on you or on your home, it is unlawful for your landlord to force you to leave the property. If your landlord unlawfully attempts to make you leave the property without using the eviction process, you can go to the District Court, ask for a 540-A petition, and request the court to order your landlord to stop.**

## **THE APPEAL PROCESS**

You can appeal your case to the NEW HAMPSHIRE SUPREME COURT **IF AND ONLY IF** you file a **notice of intent to appeal** with the DISTRICT COURT within seven (7) days of the court's decision. If the eviction is based on non-payment of rent, you must pay one week's rent into the court at the time you file your notice of intent to appeal, and you must pay your rent weekly into the court thereafter.

For more information on appealing your case, contact the **LEGAL ADVICE AND REFERRAL CENTER** at **800-639-5290** or **603-224-3333**. In addition, the **FAIR HOUSING PROJECT (800-921-1115** in-state, or **603-669-4960** in Manchester), a statewide program of **NEW HAMPSHIRE LEGAL ASSISTANCE**, provides legal services to low-income residents.



## CHAPTER 5. ABUSIVE BEHAVIORS

Anyone can be a victim of sexual violence – adult women and men, teenagers, children, people who are mentally and physically disabled, and the elderly, regardless of race, national origin, sexual orientation or economic status. If you are an immigrant or a refugee, you too have legal rights to protect yourself from abuse.

It is against the law for someone to threaten or assault you, even if that person is your spouse, partner, someone you are dating, or someone you once dated (**RSA 173-B**). This includes acts or attempted acts of:

- ▶ Assault or reckless conduct (as defined by **RSA 631:1** to **631:3**);
- ▶ Criminal threatening (as defined by **RSA 631:4**);
- ▶ Sexual assault (as defined in **RSA 632-A:2** through **632-A:5**);
- ▶ Interference with freedom or kidnapping (as defined in **RSA 633:1** through **633:3-a**);
- ▶ Destruction of property (as defined in **RSA 634:1** and **634:2**);
- ▶ Unauthorized entry (as defined in **RSA 635:1** and **635:2**);
- ▶ Harassment (as defined in **RSA 644:4**); and
- ▶ Stalking (as defined in **RSA 633:3-a**).

**If you are in danger now, stop reading and call for help.**

**THE POLICE AT 9-1-1**

**NH DOMESTIC VIOLENCE HOTLINE AT 866-644-3574**

**NH SEXUAL ASSAULT HOTLINE AT 800-277-5570**

**TDD/VOICE 800-735-2964**

**Request an interpreter or other accomodation if necessary**

### **ARE YOU IN A MEDICAL EMERGENCY?**

Call 9-1-1 immediately, or go to the nearest hospital. The emergency room in any public hospital must give you emergency medical care, even if you are an undocumented immigrant or do not have insurance. Inform hospital staff if you need special accommodations, such as an interpreter, sign language, or print materials in an accessible format.

**NOTE: Sexual and physical abuse of children under eighteen (18) is considered child abuse. Anyone suspecting or knowing of such abuse is required by law to report it to the Division of Children, Youth and Families (In New Hampshire at 800-894-5533; Outside New Hampshire at 603-271-6556) (RSA 169-C:29).**

## ❖ DOMESTIC VIOLENCE

If you find yourself in a relationship in which you are being hurt or intimidated, or where there is a threat of harm to you, you may be a victim of domestic violence. Domestic violence includes physical, sexual, verbal, or emotional abuse between partners, including current or former sexual, intimate, or dating partners. It occurs in families from all backgrounds and happens to individuals regardless of education, economic status, race, religion, national origin, physical or mental ability, sex, or sexual orientation. The law protects people of all ages, including minors. Additionally, the law protects you regardless of your immigrant status.

Abuse or battering is a pattern of coercive behavior used by one person to control another person's actions and feelings. Below is a **POWER AND CONTROL CHECK-LIST**, adapted from the **DOMESTIC ABUSE INTERVENTION PROJECT (218-722-2781)**. It illustrates methods batterers may use to exert power over you. You may find this useful in evaluating your own situation.

### Emotional Abuse

- ☐ Telling your family or friends lies about you
- ☐ Belittling, embarrassing, or humiliating you in front of family and friends
- ☐ Making you feel bad about yourself
- ☐ Calling you racist, sexist or other demeaning names
- ☐ Playing mind games or making you think you're crazy
- ☐ Making you feel guilty
- ☐ Accusing you of trying to attract or sleeping with other people

### Economic Abuse

- ☐ Preventing you from getting or keeping a job
- ☐ Forcing you to work "under the table" when you don't have a work permit or threatening to report you if you do work "under the table"
- ☐ Preventing you from getting job training or schooling
- ☐ Forcing you to sign papers that you do not understand, or written in a language that you do not understand, or printed in a format that is inaccessible to you, including IRS forms, court papers, and immigration papers
- ☐ Making you ask for money or taking your money
- ☐ Not letting you know about or have access to family income

### Intimidation

- ☐ Making you afraid by using looks, actions, gestures
- ☐ Destroying property, including items with special meaning to you
- ☐ Abusing pets
- ☐ Displaying weapons
- ☐ Hiding or destroying important papers, including health care cards, or your driver's license, passport, or green card



## **Coercion and Threats**

- ☐ Making or carrying out threats to do something to hurt you, your children, your friends, or family members
- ☐ Threatening to harm or harass your employer or co-workers
- ☐ Threatening to leave you or to commit suicide if you leave
- ☐ Threatening to report you to welfare or to the INS
- ☐ Threatening to withdraw immigration papers to legalize your status
- ☐ Threatening to take the children away or out of the country

## **Isolation**

- ☐ Controlling what you do, who you see, what you read, where you go
- ☐ Limiting your involvement outside the home
- ☐ Not allowing you to learn English or keeping you from friends or family who speak your language
- ☐ Using jealousy to justify actions

## **Minimizing, Denying & Blaming**

- ☐ Making light of abuse and not taking your concerns about it seriously
- ☐ Saying the abuse didn't happen
- ☐ Shifting responsibility for the abusive behavior
- ☐ Saying you caused it

You can discuss your situation with a trained professional. Call the **NEW HAMPSHIRE DOMESTIC VIOLENCE HOTLINE** twenty-four (24) hours, three hundred sixty five (365) days a year at **866-644-3574 (TDD/VOICE 800-735-2964)**. The call is free and translation is available. The hotline will connect you to one of fourteen (14) **crisis centers** throughout the state established to provide services to victims and survivors of domestic violence and their children. Pursuant to **RSA 173-C**, information you share with a **crisis center advocate** shall remain strictly confidential, unless you give written permission for its release. This means you can disclose information about your situation and receive help and support without any part of the conversation being revealed to the government, your abuser or another third party.

## **GETTING HELP FOR DOMESTIC VIOLENCE**

### **What Can the Police Do?**

The police can provide you with immediate intervention and protection. Call 9-1-1 for help. Make sure to state your name and address clearly, and indicate that you want to report an assault. Inform the operator if you need special accommodations, such as English-language translation.

When law enforcement arrives, they should make sure that you are safe. They also should physically separate you and your abuser to find out what happened. If needed, request accommodations such as an English language or sign language interpreter, so that you fully understand the police officer and the police officer fully understands you. Do not rely on your abuser to interpret for you. If the police ask about your immigration status or where you were born, you do not have to answer.

If you were assaulted within the past twelve (12) hours, the police must arrest the defendant unless there is a good reason not to. If it has been longer than twelve (12) hours since the abusive incident, the police must get a warrant to make an arrest.

A police officer can make an arrest without your consent. Although this may seem frightening, the police are there to protect you and your children, and it is in your best interest to cooperate.

There are other things law enforcement can do to help make you safe. If you left home because of the violence, they can accompany you to your home to pick up clothing and important papers. They also can transport you to a safe place such as a shelter or safe house, a friend's house, the police station, or the hospital. Often the police also will help you in contacting a local crisis center for further assistance or shelter, or give you the number so that you can call yourself.

### **What is a Domestic Violence Shelter?**

A shelter is a safe home where you and your children can live for a time if you are trying to leave an abusive relationship. You can receive these services even if you are an undocumented immigrant. If you do not understand or speak English, ask a staff person at the shelter if they have an interpreter that you can use. You also should request other accommodations, such as a sign language interpreter and accessible format print materials.

You can find the shelter nearest to you by calling the statewide **DOMESTIC VIOLENCE HOTLINE (866-644-3574; TDD/VOICE 800-735-2964)**. The call is free and translation in many languages is available. A list of local crisis centers also can be found on the inside back cover of this Handbook. The services provided at crisis centers are free and available to all people regardless of race, gender, sexual orientation, national origin, religious or political beliefs, mental or physical ability, three hundred sixty five (365) days a year. Services include:

- ▶ Twenty-four (24) hour crisis lines
- ▶ Emergency shelters
- ▶ Transportation to emergency shelters
- ▶ Court advocacy in getting **protective orders** against abusers
- ▶ Hospital and court accompaniment for support
- ▶ Information and help in getting public assistance

A state law makes getting help safer for you. **RSA 173-C** states that information shared between a victim of a sexual assault or domestic abuse and a **crisis center advocate** shall remain confidential. This information is never given out, unless the crisis center has received written permission from you. This means you can disclose information about your situation and receive help and support without any of the conversation being revealed to the government, your abuser, or another third party. However, under **RSA 173-C**, crisis center advocates are required to report suspected or known incidences of child abuse to authorities.

**NOTE: Some advocates work for the hospital or police department. Information you share with them may not be confidential. Be sure to ask if the advocate is covered under the confidentiality rules of RSA 173-C.**

## **If You Are in Danger and Leave Home**

If you are in danger, leave your home and go to a friend's house or to a domestic violence shelter. If you stay with a friend or a family member, keep your location secret if possible. If you go to a shelter, you have the right to keep your immigration status private.

If you leave your home, make every effort to take your children with you. You also should bring any identification documents that you have, such as:

- ▶ Driver's license;
- ▶ State identification;
- ▶ Passports;
- ▶ Green cards;
- ▶ Visas for yourself and your children;
- ▶ Immigration papers and correspondence;
- ▶ Copy of any documents that establish your residence with your spouse;
- ▶ Copy of any documents that establish you live in the United states;
- ▶ Any police, doctor and other records of the abuse;
- ▶ Birth certificates;
- ▶ Documents from any public assistance programs;
- ▶ Rental agreements;
- ▶ Checkbooks;
- ▶ Credit cards;
- ▶ Paycheck stubs;
- ▶ Marriage license;
- ▶ Family pictures; and
- ▶ Copies of tax returns for yourself and your partner

It also may be helpful to bring information with you regarding your partner. Make a copy of your partner's driver's license, alien card or certificate of naturalization, or copy the information on a piece of paper.

## **The Personalized Safety Plan**

Whether or not you are ready to leave your partner, it is a good idea to work out a personalized safety plan *before* you are in the position of having to quickly flee from danger. The safety plan contains suggested tips for increasing your safety while you are in an abusive relationship. You should keep your safety plan in a secure place, along with the identification documents listed above.

A representative from your local crisis center can help you to fill out the plan. Call the statewide **DOMESTIC VIOLENCE HOTLINE** at **866-644-3574 (TDD/VOICE 800-735-2964)** or see the inside back cover of this Handbook to locate the crisis center nearest to you.

# THE PERSONALIZED SAFETY PLAN

*Tear out this page and keep it in a safe place along with important papers and documentation that you have for yourself and copies of identification documentation regarding your partner.*

► I can contact my local crisis center at \_\_\_\_\_.

► I will have important phone numbers for my children and myself:

Police \_\_\_\_\_

Hotline \_\_\_\_\_

Friends, Neighbors, Relatives \_\_\_\_\_

Shelter \_\_\_\_\_

► I can tell \_\_\_\_\_ and \_\_\_\_\_ about the violence and ask them to call the police if they hear suspicious noises coming from my home.

► If I leave my home, I can go to (list 4 places):

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► I can leave extra money, car keys, clothes and copies of papers with \_\_\_\_\_.

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► To ensure safety and independence, I can:

❖ keep change for phone calls with me

❖ open my own savings account

❖ rehearse my escape route with a support person

❖ review my safety plan on \_\_\_\_\_ (date).

*If you decide to end your relationship, the following suggestions may increase your safety.*

- ▶ I can:            change the locks  
                      install steel/metal doors, a security system, smoke detectors and an  
                      outside lighting system.
  
- ▶ I will inform \_\_\_\_\_ and  
                      \_\_\_\_\_ that my partner  
no longer lives with me and ask them to call the police if he or she is seen near  
my home or my children.
  
- ▶ I will tell people who take care of my children that \_\_\_\_\_  
and \_\_\_\_\_ are the only people who have permission to  
pick up my children.
  
- ▶ I can tell \_\_\_\_\_ at work about my situation and  
and ask \_\_\_\_\_ to screen my calls.
  
- ▶ I can avoid stores, banks and \_\_\_\_\_ that I used  
when living with my abusive partner.
  
- ▶ I can obtain a protective order from \_\_\_\_\_  
I can keep it on or near me at all times and leave a copy with \_\_\_\_\_  
\_\_\_\_\_
  
- ▶ If I feel down and ready to return to a potentially abusive situation, I can call  
\_\_\_\_\_ for help or attend  
workshops and support groups to strengthen my relationships with other people.

## TAKING CARE OF YOURSELF

- ▶ **Know that you have done nothing to provoke or cause the abuse.** What is happening to you is not your fault and is not because of anything that you have or have not done. The abuser alone is responsible for the abusive behavior.
- ▶ **Join a support group.** Local crisis centers are great resources and can assist you in locating a group in your area.
- ▶ **Develop a support system.** Keep in touch with friends who are supportive and understanding. Tell someone about each episode of abuse. And remember, you can call your local crisis center for support twenty-four (24) hours a day, three hundred sixty five (365) days a year.
- ▶ **You may experience stress and trauma and might want to seek assistance.** You may begin to experience some things like rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping or eating patterns, exhaustion, or frequent crying spells. You are not going crazy. Your body and mind are reacting to the stress caused by the abuse. Talking to someone who is trained to work with victims and survivors may help stop some of the symptoms that are interfering in other aspects of your life. Your local crisis center has a list of people skilled in this work.

## LEGAL HELP FOR DOMESTIC VIOLENCE

There are both civil and criminal options available to you to protect yourself from abuse.

If you call the police for assistance, they are expected to make an arrest unless there is good reason not to. Once the abuse has been reported to the police, it becomes a **crime against the state**, and the decision of whether the case goes forward is up to the police and the prosecutor. It is not your choice. You may be asked to testify as a witness. You do not need to be alone during this process. Call your local crisis center for support. (See below, **“Criminal Cases”**, for more information).

If the police do not make an immediate arrest, you may file a complaint yourself. To help yourself through the court process, write down details of the assault, such as:

1. Date and time of the attack, what happened, where it happened, and what your injuries were;
2. Police involvement, when they were called and what they did;
3. Property damage; and
4. Names and addresses of witnesses.

Save evidence such as torn clothing, and take pictures of your injuries. To file a complaint, go to the police station or the DISTRICT COURT serving the city or town where the assault took place (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts). Once the complaint is filled out, either a summons will be served on the abuser to appear in court, or a warrant will be issued for an arrest.

**NOTE: Even if arrested, your abuser may not stay in jail. The abuser may be released on monetary bail on the condition that he or she return to court for the hearing, or, in many cases, on his or her written promise to return to court for the hearing.**

## DOMESTIC VIOLENCE PROTECTIVE ORDERS

Whether or not an arrest is made, you can file for a protective order from the court. A **domestic violence protective order** under **RSA 173-B** is available if you have been subject to actual or threatened physical violence or other forms of abuse by a family or household member or someone with whom you are a current or former intimate partner. When you file a petition for a domestic violence protective order, you will be the **plaintiff**, and the abuser will be considered the **defendant** in a civil action.

You do not need to be an adult to get a domestic violence protective order. The following list includes minors as well as adults who are eligible to file a petition:

- ▶ Spouses or ex-spouses;
- ▶ Family members;
- ▶ Persons who live or have lived together; and
- ▶ Persons who are dating or have dated, including minors.

You do not need to be a citizen or legal permanent resident to get a domestic violence protective order. If you are uncomfortable about filing a petition because you are undocumented or unsure about your immigration status, you should seek the assistance of an immigration attorney. For immigration advice, call the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** (See **RESOURCE DIRECTORY**). Until then, you should do what you need to do to make yourself safe.

If you are in fear of immediate danger during a period of time when the courts are closed, you should seek the help of the police for an **emergency protective order**, sometimes referred to as a telephonic order. The police will fill out the necessary paperwork and contact a judge by telephone. If the judge issues the emergency protective order and the plaintiff wishes to remain protected under a court order, the plaintiff then must go to the court by the close of business on the next regular business day to file a petition for a domestic violence protective order. For example, if you receive an emergency order on Friday night, you must appear in court by the close of business on Monday.

### What Can Domestic Violence Protective Orders Do?

Through a domestic violence protective order from the court, you can request certain provisions. You will need to show the court immediate and present danger of abuse. Obtaining a domestic violence protective order is a two-step process, which begins with a **temporary domestic violence protective order**, effective for thirty (30) days. Requests for orders on a temporary basis may ask the court for the following:

1. Ordering the defendant to stop abusing, threatening, harassing, or intimidating you or your household members, other relatives or friends;
2. Restraining the defendant from entering or attempting to contact you at the place you live, work, or attend school;
3. Restraining the defendant from taking or damaging your property;
4. Ordering the defendant to turn over any and all weapons he or she may have to a peace officer (You should list the number, locations and kinds of weapons the defendant has); and

5. Awarding you temporary custody of the minor children that you and the defendant have together (In most cases, the defendant will still have visitation rights with the children. The court may refer you to a supervised **visitation center**, especially in an unsafe situation.).

On the petition for a temporary domestic violence protective order, you also can request additional orders to be granted at the time of final hearing. These include:

1. Directing the defendant to pay child support if applicable;
2. Directing the defendant to follow a court approved visitation plan;
3. Giving you use of the home, furniture or car (If the property is in the defendant's name only and you do not have children together, and you are not married, you most likely will not receive this);
4. Ordering the defendant to pay for costs caused by the most recent incident of abuse, such as medical fees, loss of wages, moving expenses, emergency shelter, damaged property, and attorney fees;
5. Ordering the defendant to attend personal counseling, a parenting class or a batterer's intervention program;
6. Other relief, including ordering the defendant to turn over any documents, such as those related to your immigration status, passports of the children, and health insurance information. You also may request under "Other" ordering the defendant to make automobile, insurance, health care, utilities, rent, or mortgage payments.

It is important to note that the judge will consider requests for the final hearing *if and only if* you check off the box on the original petition. You will not have the opportunity to make requests for additional orders at the final hearing, so be sure to check off each box on the petition that you think may be needed for your protection. For example, if your partner has threatened to take the children away or out of the country if you report abuse, be sure to consider requesting child custody and child support on the petition.

### **Where Do I Go for a Protective Order?**

You apply for a domestic violence protective order in the DISTRICT COURT or FAMILY DIVISION serving the city or town where you live, the city or town where your abuser lives, or the city or town where you went for safety. There is no cost for filing the domestic violence protective order or for serving the papers on your abuser. You do not need an attorney. The process is designed to be readily available to all people who need protection. The **RESOURCE DIRECTORY** at the end of this Handbook has a listing of New Hampshire courts.

Your local crisis center may be able to provide you with an advocate during this process. While the advocate cannot serve as a legal representative, the advocate will be able to offer you support and answer any questions you have about the procedure. Crisis centers will provide services regardless of your immigration status.

### **FILING THE PETITION**

- **At the courthouse, go to the clerk's window and request a Domestic Violence Petition.** The Domestic Violence Petition is an application which will be reviewed by a judge. At the initial or tempo-



rary hearing the judge will decide whether there is enough information to show that you are in immediate and present danger of abuse as defined by New Hampshire law.

- ▶ **The petition requests information about your relationship with your partner** (married, living together, etc.), any children you may have together or on your own, and where you live. Check the boxes or fill in the lines that apply to you.
- ▶ **On the application, describe in detail the most recent incident of physical abuse**, or threat of physical abuse, and also any history of abuse that may have occurred in this relationship. In describing the abuse, make sure to mention injuries, dates of abuse, hospital visits, threats to harm or kill you, the use of weapons or threats to use weapons, or whatever you feel best describes your fear and the need for protection. *If there have been other acts of violence, be sure to provide dates, times and as much detail as possible of the other abuse. If you run out of space on the lines provided, ask the clerk for additional paper.*
- ▶ **If the defendant has access to weapons**, provide the court with information about the location and description of the weapons. Let the clerk know where the defendant is. If the defendant is on the way to the courthouse, court security will need to be notified.
- ▶ **The court will ask you to fill out a defendant information sheet** that will be given to law enforcement so they can serve the order on the defendant. Provide the police with the defendant's place of employment, date of birth, and address where he or she can be located.
- ▶ **At the bottom of the petition is a series of boxes.** The statements next to these boxes are requests from the court for specific orders. The first set of boxes applies to requests to be included in the temporary domestic violence protective order. The second set of boxes applies to requests for additional orders to be granted at the final hearing. See the section above, "What Can Domestic Violence Protective Orders Do?" for more information about the specific orders you can request on the petition.

You will need to sign the Domestic Violence Petition in front of the court clerk. A judge then reviews the petition. The process is called **ex parte**, which means you are seeking immediate, emergency relief without the defendant being present. After receiving your petition, the judge may or may not want to see you to ask further questions. If the petition is granted, you will receive a temporary order.

The clerk will assign you a court date for the final order and will provide you a copy of the temporary protective order. *These papers should be kept on your person at all times.* Before leaving the court, be sure the clerk has your current contact information. The court will keep this information confidential.

Immediately upon issuing the temporary domestic violence protective order, the clerk will fax three forms to the police department responsible for serving the order on the defendant: a copy of the temporary order for the defendant, a completed Defendant's Information Sheet (on which you describe the defendant so the police know who to look for), and a Return of Service Form (which the police return to the court to inform them that the defendant has indeed received a copy of the temporary order). The clerk also must notify the State Registry and Gun Line. *Under no circumstances should you bring the paperwork to the defendant.*

According to the law, the domestic violence protective order goes into effect as soon as it is signed (**RSA 173-B:6**). Be aware that most police departments will not act upon a complaint of violation until the defendant has been served; however, the police still should be notified of any violations. For this reason, the court is very careful to get the paperwork to the police right away. You can call the police to verify when and that the order has been served to the defendant.

**NOTE: It is important to keep in mind that a domestic violence protective order is a piece of paper. There is no guarantee that your abusive partner will comply with the order, although many abusers do to avoid further court action. Even if you have a domestic violence protective order, you still must take the steps necessary to keep you and your children safe.**

Upon being served the domestic violence protective order, the defendant has the right to request an immediate hearing. The hearing will be held three (3) to five (5) business days after a written request from the defendant is received by the clerk. Check with the court clerk to verify whether or not the defendant has requested an immediate hearing. Remember to be sure the court always has your most current contact information. The court will keep this information confidential.

## **PREPARING FOR THE FINAL HEARING**

It is critical that you prepare for the final hearing. At the final hearing, both you and the defendant will be asked to state your positions to the judge. You must provide the court with clear and convincing evidence that you are in immediate and present danger of abuse as defined by New Hampshire law. You should be as specific and as detailed as possible regarding incidents of abuse.

If the defendant has an attorney, or if you have issues around the custody of your children or possession of your property, or if you have any other pending legal issues, **YOU SHOULD SEEK THE HELP OF AN ATTORNEY**. See the **RESOURCE DIRECTORY** at the end of this Handbook for information on legal services in New Hampshire. Additionally, if you cannot afford a lawyer, you may be eligible for help through the agencies below.

- ▶ **LEGAL ADVICE & REFERRAL CENTER (LARC) (800-639-5290 or 603-224-6934)** provides legal advice and referral services to low-income residents in New Hampshire, with a concentration on family law.
- ▶ **DOVE PROJECT (800-639-3574)** provides free legal representation for qualifying survivors of domestic violence at final restraining hearings. The DOVE Project **MUST** be accessed through your local crisis center. There are financial guidelines that determine whether or not you are eligible, and you will be asked to answer questions about your finances.
- ▶ **DOMESTIC VIOLENCE ADVOCACY PROJECT (DVAP) (800-562-3174)**, operated through New Hampshire Legal Assistance, provides legal services for low-income survivors of domestic violence, focusing on cases involving custody of children.
- ▶ **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** offers immigration attorneys if you are uncomfortable about attending the final hearing because you are undocumented or unsure about your immigration status.

In preparing for your final hearing, collect all the evidence you can to support your case. Get copies of medical records, medical bills, police documents, photographs of damages or injuries, receipts, partner's pay-stubs, etc. Also, gather all forms of contact the defendant has had with you (such as printed e-mail messages, letters, cards, answering machine messages) that refer to the violence or that threaten you. Bring copies for the court and keep a set for yourself. Ask witnesses to attend the hearing.

You cannot be forced to have contact with the defendant before, during, or after the hearing. If the defendant or the defendant's attorney attempts to communicate with you prior to the hearing at the courthouse, you should tell court security. You cannot be forced to settle the case or to sign anything without the court's involvement.

What follows is what you can expect at the hearing itself and what you will need to do to be adequately prepared:

- ▶ **Submit your evidence.** When your case is called, follow the instructions of the bailiff. The judge or other court personnel will swear you in. Hand any documents, pictures, etc., to the bailiff to bring to the judge. The court will supply the defendant with copies of your evidence.
- ▶ **Describe the incident.** First, recount the most recent incident of abuse, and then describe past abuse. While it may be painful, it is necessary to provide *detailed* accounts for each incident. Often, it is helpful to describe the abuse in chronological order, and you can refer to your original petition if that is useful. A judge, in fact, may ask that you discuss only the statements you made on the original petition. You should follow this directive while providing as much detail as possible of the abuse.
- ▶ **Make reference to any expenses incurred due to the abuse.** Show medical bills, estimates to repair damages, lost time at work, etc.
- ▶ **Submit a financial affidavit and a Uniform Support Order.** If you have children, you will need to consider child custody and support. To obtain child support, you must complete a financial affidavit and the top portion of a Uniform Support Order. Request these forms from the court clerk prior to the final hearing. Present your completed forms at the time of the final hearing.
- ▶ **Make recommendations for reasonable visitation.** Think about visitation times for the abusive partner and the children: how often, where, supervised or unsupervised? A number of supervised visitation centers are located throughout the state, described in **CHAPTER 6** of this Handbook.
- ▶ **Outline your basic needs.** Do you want or need the home, furnishings or a vehicle? Make a list of any basic needs with costs, such as food, shelter, transportation, job expenses, and childcare.

Based on the evidence presented during the final hearing, the judge will make a decision as to whether or not to grant a final order. If the order is granted, it will last for one (1) full year from the date it is signed. If it is denied, the temporary order is no longer in effect. Sometimes, a judge will notify parties of decisions by mail; in these cases, the temporary order remains in effect until notification is received.

## IF THE FINAL ORDER IS NOT GRANTED

If the final order is not granted, there are other options to keep you and your children safe. A domestic violence protective order is only one of the many tools available to you if you are in a domestic violence situation.

- ▶ Contact your local domestic violence crisis center. The crisis center is available to you twenty-four (24) hours a day, seven (7) days a week and can help you make plans to maximize your safety. Services are free and available regardless of your immigration status or age.
- ▶ Complete the safety plan included earlier in this chapter. If you are unsure of the services available to you, contact your local domestic violence crisis center to assist you with your options.
- ▶ If the abuse continues and you are in fear for your safety, call 9-1-1. Record the details of all abusive incidents. Include what happened, where you were, the date and time of the incident, and how you were feeling. Talk with a domestic violence advocate and discuss the information.
- ▶ If your final order is denied, and the abuse continues, you always have the option of applying for a new temporary domestic violence protective order. There is no limit as to the number of times you can apply for a domestic violence protective order.

## IF THE FINAL ORDER IS GRANTED

If a final order is granted, you will receive your copy at the final hearing or you will be notified by mail. Be sure to request a *certified* copy of the final order.

When you receive your final order, make several copies. You should keep a copy with you at all times. If you have been awarded custody of your children, provide a copy of the final order to your children's school principal, teachers, or day care provider.

If your partner has ever threatened to take your children away or out of the country, and you have been granted custody of the children as part of the domestic violence protective order, the defendant is prohibited from removing the children without your knowledge. If your children are U.S. citizens, you should send a copy of the final protective order to the **U.S. DEPARTMENT OF STATE** (See **RESOURCE DIRECTORY**) to prevent issuance of passports and visas for the children.

If you have been given use of the house, the defendant will need to get personal belongings from the home. The defendant may not come to your home to get these items unless accompanied by a police officer and with reasonable notice to you. You are obligated to not damage these items in any way.

**NOTE: If the final order is granted, the court must take away any firearms, ammunition, or deadly weapons in the defendant's possession.**

## Changing the Final Order

If your situation changes, or you feel a change to your protective order is necessary, you have the right to request an amendment of your protective order at any time, even after the final order has been granted. Only a court can amend the order. You must make your request in writing to the court that issued the order. A copy of your request will be sent to the defendant. He or she will have ten (10) days to object to the changes. If the court receives an objection from the defendant, a hearing will be scheduled to discuss the request and the objection. If the

defendant does not object to your requested changes, the court will schedule a hearing to discuss the changes or will grant them without a hearing. The order then is issued against the defendant.

Note that temporary reconciliation between you and the defendant does not revoke the order.

### **Extending the Final Order**

It is very important that you are aware of the order's expiration date. Your final order is effective for (1) year, but it may be extended by a court order if there is good cause (**RSA 173-B (5) VI**). To do this, you should ask the court for an extension of one (1) month before the original order expires. If you ask the court to extend your final domestic violence protective order after it has expired, you will have to file a motion to re-open the order. While you will not need new facts to re-open the order, the motion may or may not be granted.

In either case, your request must be done in writing. A copy of your written request will be sent to the defendant. He or she will have ten (10) days to object to your request. If the court does not receive an objection from the defendant, your protective order will be extended for another year. If the defendant does object to an extension of your domestic violence protective order, the court will schedule a hearing to be held within thirty (30) days. Your current domestic violence protective order will remain in effect until the hearing date.

### **Dropping A Final Order**

You can drop your domestic violence protective order at any point during the year that it is in effect. If you choose to drop the order before the final hearing, you still must go to the scheduled hearing. When your case is called, you may explain to the judge why you are requesting that the order be dropped. If you choose to drop your domestic violence protective order after the final hearing, you need to go to the courthouse where it was issued. Explain to the clerk that you would like to drop your order. The clerk may bring you in to see a judge, and you may be asked to tell the judge why you want the order dropped. This might happen in the courtroom or in judge's chambers. If a judge is not available, the clerk may schedule a hearing at a later date.

### **Enforcing a Domestic Violence Protective Order from Another State**

Federal law provides that any valid protective order issued in one state is to be treated by another state as if it were one of its own and enforced in the same manner as an order issued in that state. If you have a protective order from another state, you can protect yourself by filing a *certified* copy of this order in any DISTRICT COURT or FAMILY COURT in New Hampshire (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts). If you do not have a certified copy, the court can have a copy of the order faxed from the court that issued the order (the defendant will not be notified of your location). The clerk then will forward the order to the administrative office of the courts to enter the order into the state database.

Even if you have not filed a copy of your order with a New Hampshire court, the order still is enforceable by the police. If you call the police to report that you have been abused, followed, threatened or intimidated, be sure to tell them you have a protective order from another state. Your New Hampshire order should be enforceable in other states as well. Be sure to inform the police department and courts in other states about the protective order issued in New Hampshire.

## Violating a Protective Order

It is against the law for the defendant to violate a temporary or final domestic violence protective order. Such violations should be reported to your local law enforcement agency immediately. Examples of violations include, but are not limited to:

- ▶ Frequent or harassing phone calls;
- ▶ Following you;
- ▶ Yelling obscenities at you;
- ▶ Coming to your place of residence, employment, or school; or
- ▶ Further physical abuse.

**IN ADDITION, IT IS AGAINST THE LAW FOR SOMEONE TO OWN OR CARRY A FIRE-ARM WHILE THERE IS A PROTECTIVE ORDER ISSUED AGAINST HIM OR HER.** Police are mandated to make an arrest in situations of protective order violations. This begins a criminal action against the defendant.

## CRIMINAL CASES

A criminal case is a court action made by the state against a person who has been charged with committing a crime, such as violations of a protective order. If there is enough evidence, the state can prosecute the case. This is done at no cost to the victim. If the court finds the defendant guilty, a punishment (or sentence) will be issued. The sentence depends upon the defendant's criminal record as well as the severity of the injuries to the victim. New Hampshire also has a hate crime law (**RSA 651:6**), which may enhance or upgrade a defendant's sentence if the court finds that the defendant was substantially motivated to commit the crime because of hostility toward the victim's religion, race, sexual orientation, national origin or sex.

Although sentences do not always include jail time, a criminal action is part of the defendant's criminal record.

Immigrants and refugees are entitled to many of the same legal rights as U.S. citizens in criminal case proceedings. Further, if you are not married to a U.S. citizen or legal permanent resident, but you have been a victim of a crime and you assist in the prosecution of your abuser, you may be able to apply for a U Visa. However, it is best not to submit an immigration application on your own without first consulting an immigration attorney. For immigration advice, contact the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** (See **RESOURCE DIRECTORY**).

Crimes are classified as either **misdemeanors** (crimes punishable by one (1) year or less in jail or fines under \$2,000.00) or **felonies** (crimes punishable by more than one year in jail or fines higher than \$2,000.00). Though the process is similar, there are some differences between the way misdemeanors and felonies are handled in the courts. Misdemeanor cases are prosecuted by a member of the police force or by a lawyer representing the city or town. A judge in a DISTRICT COURT hears these cases. The **County Attorney** prosecutes felony cases. These cases are heard in SUPERIOR COURT before a jury after a preliminary DISTRICT COURT and **probable cause hearing**. See **CHAPTER 7** of this Handbook for more information on criminal cases.

## BAIL CONDITIONS & PROTECTIVE ORDERS

When the defendant is arrested for committing a crime, he or she usually will be released on bail. A **bail order** will be issued, which directs a person who has been placed under arrest for a crime to pay money to ensure that he or she will appear in court. If the crime is one committed against you, the defendant often will be ordered to stay away from you. This is called “no contact” and is part of his or her **bail conditions**. If the defendant makes contact with you in any way, he or she will be sent back to jail until the trial.

Bail conditions are different from a **domestic violence protective order**. While both may prohibit the defendant from having any form of contact with you, bail conditions do not give you temporary custody of children, use of the home, or any of the assistance a domestic violence protective order can provide. In addition, bail conditions only remain in effect during the criminal case.

## GAINING IMMIGRATION STATUS FOR IMMIGRANT WOMEN WHO ARE ABUSED BY A SPOUSE OR PARENT

**THE VIOLENCE AGAINST WOMEN ACT** (VAWA) of 1994 allows self-petitioning for abused immigrant spouses and children of lawful U.S. residents or U.S. citizens to gain immigration status without their abuser’s help or knowledge.

You must meet certain requirements to qualify.

- ▶ You must be the abused spouse or the abused child (unmarried and under twenty-one (21)) of a lawful permanent resident (“green card” holder) or U.S. citizen. If the abuser had a green card but has been deported since the abuse, you still may qualify.
- ▶ You must be married to your abuser OR have a parent-child relationship with your abuser. Stepchildren also may qualify.
- ▶ You must file immigration papers before the two (2) year anniversary of your divorce if you have been divorced.
- ▶ You must not have gotten married just to get a green card, but instead you must have gotten married in “good faith” (that is, because you really wanted to be married).

You will not need any specific evidence to prove to the INS that you have been abused, although proof of a **domestic violence protective order** or criminal action against your abuser may help to establish your case. In some situations, your own statements may be enough.

If you think you qualify for VAWA or have any questions about VAWA, contact an immigration attorney. If you do not qualify to self-petition under VAWA, you still may be eligible to gain immigration status under other laws. For immigration advice, call the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** (See **RESOURCE DIRECTORY**).

**NOTE: Persons who have legal immigration status cannot have that status taken away by reporting the abuse of their spouse or partner. Also, your spouse or partner does not have the power to deport you. Only the INS can deport someone, and you have the right to see an immigration judge before deportation.**

## ❖ SEXUAL ASSAULT

Anyone can be a victim of sexual assault – adult women and men, teenagers, children, people with mental and physical disabilities, and the elderly, regardless of race, national origin, sexual orientation or economic status. Sexual offenses can include several kinds of crimes: sexual assault, incest, child molestation, marital sexual assault, so-called “date rape,” indecent exposure and voyeurism.

Rape is no longer a legal term in New Hampshire. It is now classified as Sexual Assault. Under **RSA 632-A**, there are three levels of sexual assault:

- ▶ **Aggravated Felonious Sexual Assault (RSA 632-A:2)** is defined as intrusion, however slight, with any object, into any opening (vagina, mouth, or anus) against a person’s will (without consent) or when the victim physically is helpless to resist. The act may be done to you, or you may be forced to perform the act. In both situations, it is considered a **felony** punishable by up to ten (10) to twenty (20) years in state prison. A person also is guilty of Aggravated Felonious Sexual Assault without penetration when he or she touches the genitalia of a person under the age of thirteen (13) for the purpose of sexual gratification or arousal.
- ▶ **Felonious Sexual Assault (RSA 632-A:3)** often is referred to as the “statutory rape law,” which involves sexual relations with someone between the ages of thirteen (13) and sixteen (16). The legal age of consent in New Hampshire is sixteen (16). Felonious Sexual Assault also includes sexual contact, short of penetration with a person less than thirteen (13) years of age. It is a **class B felony** and is punishable from three and a half (3.5) to seven (7) years in state prison.
- ▶ **Sexual Assault (RSA 632-A:4)** is sexual contact without consent with a person thirteen (13) years old or older for the purpose of sexual gratification. It is a **misdemeanor** punishable by up to one (1) year in state prison.

Immigrants have the same legal protections as U.S. citizens in the crime of sexual assault.

## SEXUAL ASSAULT IS A CRIME

Sexual assault is forced, manipulated, or coerced sexual activity in which the assailant uses sex to inflict humiliation upon or to exert power and control over the victim.

In New Hampshire, the legal age of sexual consent is sixteen (16). It is always a crime for a person to have sexual relations with:

- ▶ Any person under the age of sixteen (16);
- ▶ Another person who does not consent; or
- ▶ Any family member under eighteen (18), other than a spouse.

Additionally, sexual assault may include:

- ▶ Coercion for sexual activity with threats of physical violence;
- ▶ Threats to retaliate;
- ▶ Using a position of authority or power to gain sexual activity;
- ▶ Providing intoxicating substances, alcohol and drugs to gain sexual activity (see below, **“Rape Drugs”**).



A sexual offender can be anyone. Most are married or are in ongoing relationships. Sexual offenders may be strangers to their victims but, more often, the victim knows the offender. The sexual offender may be an acquaintance, partner, spouse, or other family member. In over half of all reported sexual assaults, the victim and assailant know each other. Child victims know their assailant in eighty (80) percent of all cases.

Being sexually assaulted by someone you know does not make the crime any less serious or traumatic. In fact, there may be additional trauma associated with acquaintance rape due to the violation of trust, shared social space, and common friends.

**NOTE: If the crime of sexual assault is perpetrated by a family member, it is considered incest under RSA 639:2. Also, sexual and physical abuse of children under eighteen (18) is considered child abuse. New Hampshire law requires that anyone knowing or suspecting of child abuse must report it to the Division of Children, Youth and Families (In New Hampshire at 800-894-5533; outside New Hampshire at 603-271-6556) (RSA 169-C:29).**

## **GETTING HELP FOR SEXUAL ASSAULT**

### **What is a Sexual Assault Crisis Center?**

Confidential, free support is available to you twenty-four (24) hours a day, three hundred sixty five (365) days a year through local sexual assault crisis centers. **Crisis center advocates** will accompany victims to the hospital and to court, provide emotional support, and explain legal and other options to sexual assault victims and their parents, partners, or friends. These services are free and available to all people regardless of race, gender, sexual orientation, national origin, religious or political beliefs, physical or mental ability, age, or immigration status. For the crisis center nearest to you, call:

**STATEWIDE SEXUAL ASSAULT HOTLINE**  
**800-277-5570**  
**(800-735-2964 TDD/VOICE)**

The call is free and translation is available. A list of local crisis centers also can be found on the inside back cover of this Handbook.

Pursuant to **RSA 173-C**, information you share with a crisis center advocate must remain confidential unless you provide written permission for the information to be released. You can disclose information about your situation and receive help and support from an advocate without fearing that this information will be revealed to the government, your assailant, or another third party. However, under **RSA 173-C**, crisis center advocates are required to report suspected or known incidences of child abuse to authorities.

**NOTE: Some advocates work for the hospital or police department. Information you share with them may NOT be confidential. Be sure to ask if the advocate is covered under the confidentiality rules of RSA 173-C.**

## What Should You Do if You Are Sexually Assaulted?

If you are sexually assaulted:

- ▶ First, get to a safe place. Call the police at 9-1-1. If necessary, request a language interpreter or other special accommodation.
- ▶ Call a sexual assault crisis center. It is helpful to have a **crisis center advocate** nearby when the police arrive to inform you of your legal options. Advocates also will accompany you to the hospital or, if the case proceeds, offer support during the court process.
- ▶ Do not change your clothes, bathe, brush your teeth, douche or wash away any evidence.
- ▶ Go to the nearest hospital emergency room to be examined. The emergency room in any public hospital must give you emergency medical care, even if you are an undocumented immigrant or do not have insurance. It is important to do this as a measure to take care of yourself. Request that the hospital provide an interpreter or other accommodation, if necessary. Unless you are a minor, medical personnel will not report your case automatically to the police.
- ▶ Most hospitals participate in the **Sexual Assault Nurse Examiner Program** (SANE). A SANE is a specially trained Registered Nurse who provides complete care to the sexual assault victim. You should request that a SANE be called if possible.
- ▶ At the emergency room, you will be given a **Sexual Assault Medical/Forensic Exam**. This standardized exam is designed to assess your physical condition as well as to gather physical evidence of the assault. Due to the nature of the crime, it is important that this evidence be collected as soon as possible. The sexual assault medical exam can be done up to five (5) days after the assault. You have the right to refuse any or all parts of the exam without it affecting your hospital care. (See below for more information about the exam.)
- ▶ Bring a change of clothing with you. Any clothing worn at the time of the assault will be considered evidence. The hospital will collect the clothing that you had on at the time of the assault and will document any injuries you may have received. The evidence collected will be used in investigating the crime should you choose to report it to the police.
- ▶ If you choose to report the crime, the hospital will call the local police. The hospital also will contact **DIVISION OF CHILDREN, YOUTH, AND FAMILIES** in any case involving the abuse of a minor.

Remember, if you are unsure what your options are regarding sexual assault and want to talk to someone confidentially, you can call your local crisis center twenty-four (24) hours a day, three hundred sixty five (365) days a year.

## THE SEXUAL ASSAULT MEDICAL EXAM

### Who Pays for the Exam?

Victims of sexual assault are not required to pay for the medical exam. There are three (3) possible methods of payment.

1. If you ask for the process to be kept anonymous, then the State of New Hampshire is responsible for paying for the medical/forensic exam. The anonymous reporting procedure allows the rape kit to be turned over to the State Police

Forensic Laboratory, where it will be held for three (3) months while the victim decides whether or not to report the crime. It is important to note that the evidence cannot be analyzed until the victim reports the crime.

2. If you choose not to be anonymous and you have insurance, then the state will bill your insurance company.
3. If you choose not to be anonymous and have no insurance, then the state will pay for the exam.

### **Sexually Transmitted Diseases and Pregnancy Testing**

The sexual assault exam includes tests for the sexually transmitted diseases Trichomonas, Chlamydia, and Gonorrhea. However, these tests are done on a case-by-case basis and are NOT standard procedure for all sexual assault exams. Request that these tests are conducted as part of your exam. While the results of these tests will not be available for three (3) to five (5) days, an antibiotic medication may be offered as a preventative measure. The medication usually is administered before the patient leaves the hospital. The local crisis center can arrange for immediate funding for some post-sexual assault medications.

A baseline pregnancy test is done at the hospital to determine your eligibility for emergency pregnancy prevention (the “morning after pill”), which may prevent you from getting pregnant from the assault if it is taken within seventy-two (72) hours. Be sure to receive the medication while you are in the hospital, otherwise the expense may not be covered as part of the exam. Your local crisis center can provide you with referrals for a physician or clinic in your area for additional or follow-up testing.

### **HIV Testing**

Although an HIV test can be done at the time of the sexual assault medical exam, it is NOT routinely part of the exam. If you choose to have a separate and confidential HIV test done at the hospital, the results will become part of your hospital record. The HIV test done at the hospital is a baseline test and will determine if you were infected prior to the assault. It will not indicate if the offender infected you. You also may be eligible for HIV post-exposure prophylactic medication.

The “window” for HIV (length of time between acquiring the infection and getting positive results) is three (3) to six (6) months, so follow-up testing is important. The hospital can provide you with anonymous testing sites throughout New Hampshire where you can have the test results documented by a number rather than by your name. Your local sexual assault crisis center or **NH HELPLINE (800-852-3388)** also can provide you with the telephone numbers for anonymous or confidential testing sites in your area.

The **defendant** is required to have an HIV/AIDS test ONLY if he or she is found guilty of sexual assault, as defined by the law (**RSA 632-A:10-b**). He or she cannot be forced to be tested prior to the trial or if found not guilty. Once convicted and sent to state prison, the defendant is tested automatically and the results of the test are sent to the Attorney General’s **OFFICE OF VICTIM/WITNESS ASSISTANCE**. That office will notify the county **VICTIM/WITNESS PROGRAM**, who will contact you with the results. If you have concerns or questions, contact your Victim/Witness advocate (see **CHAPTER 7** for more information about Victim/Witness Assistance).

## **“RAPE DRUGS”**

Many people mistakenly think that they cannot report a sexual assault or press charges for assault if they have been drinking or were intoxicated. The use of alcohol or drugs does NOT give someone the right to assault you. Being intoxicated can make you incapacitated or helpless to resist. If you have been sexually assaulted while intoxicated you are protected under New Hampshire law. The same is true for victims who were using drugs prior to the assault.

While alcohol remains the most prevalent rape drug, some assailants use other **rape drugs** to make victims helpless. Such drugs include Rohypnol (“Roofies”), Gamma-hydroxybutyrate (“GHB”), Ketamine (“Special K”), and MDMA (“Ecstasy”). Often times these drugs are slipped into victim’s drinks, and are tasteless, odorless and colorless. Signs that you may have been drugged include:

- ▶ Feeling a lot more intoxicated than you usually do when drinking the same amount of alcohol;
- ▶ Waking up very hung over, feeling “fuzzy,” experiencing memory lapse and being unable to account for a period of time;
- ▶ Being able to remember taking a drink, but not being able to recall what happened for a period of time after you had the drink; or
- ▶ Feeling as though someone had sex with you, but not being able to remember part of or the entire incident.

Under the **DRUG-INDUCED RAPE PREVENTION PUNISHMENT ACT OF 1996**, it is illegal to distribute or administer Rohypnol or Gamma-hydroxybutyrate to another person without that person’s knowledge and with the intent to commit a violent crime. This act, separate from the assault itself, is punishable by up to twenty (20) years in prison and a fine.

If you believe the person who assaulted you used a rape drug, inform police and medical personnel right away. A special urine test can be done to check for rape drugs in your system. The test must be done immediately and will be paid for by the state.

## **REPORTING THE CRIME OF ASSAULT**

If you are eighteen (18) years of age or older when a felony sexual assault occurs, the **statute of limitations**, or the time limit for reporting, is six (6) years. That means you have up to six (6) years from the date of the assault to report it. If you are under the age of eighteen (18) when the assault occurs, you have until age forty (40) to report the crime. There have been a number of changes made in the law over the last twenty (20) years, so always check with the county attorney to see if your case falls within these guidelines. Even with the longer time to report sexual assault crimes, keep in mind that prosecutions of any kind become more difficult to prove the more time elapses between the crime and the reporting of it. If you are uncertain of what action to take, talk to a local **crisis center advocate**.

### **Reporting**

A report must be made to the police department in the city or town in which the assault occurred. Request a language interpreter or other special accommodations, if necessary, so that you fully understand the police and the police fully understand you. If you are unsure about how to report the assault to the police, or if you would like a **crisis center advocate** to go with you, contact your local crisis center twenty-four (24) hours a day, three hundred sixty five (365) days a year.

## Investigation

Once the crime has been reported to the police it becomes a **crime against the state** with the survivor as the chief witness. The decision as to whether the case will go forward is up to the police and the prosecutor. An investigation will be conducted by the law enforcement agency that has jurisdiction over the case. Through the investigation process, the accused probably will become aware of your report. If you have concerns for your safety, inform the police and seek the support of a **crisis center advocate**.

The police may need to talk with you several times during their investigation. Request a language interpreter or other special accommodations, if necessary, so that the police fully understand you and so that you fully understand the police. In the interview with police, you will be asked to give a detailed account of the incident. Sometimes police will audiotape or videotape the statement, or they may request that you write down everything that you can remember.

## Arrest and Arraignment

If the investigation results in an arrest, the case then is turned over to the **County Attorney's** Office for prosecution. The defendant will be brought to a bail commissioner or judge for a bail hearing. Under New Hampshire law, the defendant is eligible for bail unless the state can show that the defendant is a danger to society or that the defendant presents a risk of flight. The state may ask for bail conditions that include **no contact** with you or your family.

## Grand Jury

A **grand jury** is a group of twelve (12) to twenty-three (23) citizens. The jury hears the evidence related to the case and decides if there are good grounds to bring the case to trial. The **County Attorney's** Office presents the evidence in **closed session**. A closed session is a hearing in which no one else is allowed to sit in on the hearing. The defendant usually is not present, but sometimes the victim is asked to testify during this process. If twelve (12) or more members of the **Grand Jury** believe that the defendant may have committed the crime, the defendant will be charged. This formal charge is called an **indictment**.

## Arraignment in Superior Court

At the **arraignment**, the defendant is charged with a specific crime. A new plea is entered, and bail is reset. At the time of the arraignment, the defendant will be appointed an attorney.

**NOTE: It is very common for the defense attorney, or an investigator who works for the defense attorney, to try to contact you. You do not have to talk to the defense attorney or investigator. If you choose to talk to the defense attorney or investigator, you should let the prosecutor know. You may confuse the different attorneys and investigators working on the case. You have the right to know the identity and employment of anyone asking you questions about your case. If you are unsure, ask them for identification and call the County Attorney who is handling your case.**

## Trial

All evidence, information and witness testimony is presented during the trial. In a bench trial, a judge determines whether the defendant is guilty or not guilty. In a jury trial, all twelve (12) jurors must agree on a verdict of guilty or not guilty.

The defendant has the right to a jury trial by law. If the verdict of the trial is not guilty, the defendant has been acquitted and will be released. The defendant can never be retried for this particular incident. When jurors cannot agree on a verdict, it is called a **hung jury**. This may result in a new trial. If the verdict is guilty, the judge will sentence the defendant at a later date. Defendants who have been found guilty of **Aggravated Felonious Sexual Assault** or **Felonious Sexual Assault** are not released on bail while waiting for their sentence.

### **Pre-Sentence Investigation**

Before sentencing, the judge will refer the case to the Probation Department. A probation officer will conduct an investigation of the defendant's background and also will consider the impact of the crime on the victim's life. This information is used in determining the sentence.

### **Sentencing Hearing**

At the **sentencing hearing**, the judge will consider testimony from witnesses, recommendations from the probation officer's report, and arguments by the attorneys. Under New Hampshire law, victims of sexual assault have the right to address the court regarding the impact that the crime has had on their lives. You should work with an advocate to prepare a **victim impact statement** for the court. You also have the right to present these concerns at any future hearing regarding changes in the sentence. Based on all of this information, the judge will sentence the defendant.

## **LEGAL HELP FOR SEXUAL ASSAULT**

Support and information is available through your local sexual assault **crisis centers** to assist sexual assault victims at the hospital, police station, and with the court process. (See above, "Getting Help for Sexual Assault"). The criminal justice system often involves delays and postponements. As a result, the time between the initial investigation and its conclusion in court can be long. It is helpful to work with an advocate who will provide emotional support and who can answer any questions about the process.

If a case goes to the **County Attorney's** office, a **victim/witness advocate** will be assigned to provide you with support. Victim/witness advocates are part of the prosecutor's office and will keep you informed about what is happening with your case. Please be aware that the confidentiality statute only applies to **crisis center advocates** and NOT to victim/witness advocates. If you have confidential information or concerns, you should seek the help of your local crisis center advocate. More information about the **VICTIM/WITNESS ASSISTANCE PROGRAM** and your rights in the criminal justice system can be found in **CHAPTER 7** of this handbook.

### **Other Legal Options**

Below are other legal options available to you under New Hampshire law.

- ▶ **Civil Suits.** Sexual assault victims may choose to sue the sexual offender for damages and emotional harm in a civil case even if there is not a criminal case. Bringing a suit will require the help of an attorney. Your local sexual assault crisis center can provide you with more information and a list of attorneys who may be able to help you with your case. You may wish to pursue a civil suit if you have not been involved in a criminal case and have suffered long term costs as a result of the assault.

- **Restitution Under State Law.** Victims of sexual assault also may be eligible to apply to the New Hampshire Victim's Compensation Board for compensation of medical/dental expenses, mental health therapy expense, lost wages or other out-of-pocket expenses not covered by insurance or other resources available to the victim. The compensation must be related directly to the victim's condition as a result of the crime. Property loss and pain and suffering are not compensable. In order to qualify, the victim must report the crime to law enforcement. For more information call **800-300-4500** (toll free in NH only) or **603-271-1284**. More information about the **VICTIMS' COMPENSATION PROGRAM** can be found in **CHAPTER 7**.

## COMMON EFFECTS OF SEXUAL ASSAULT

Sexual assault is a criminal act of violence. Being sexually assaulted by someone you know does not make the crime any less serious. Everyone reacts in different ways following a sexual assault. Common reactions include fear that the attacker may come back; feelings that the victim did something to cause the assault; fear of being alone or in crowds; fear that no one will believe the assault happened or that friends and family will find out about the assault. Anger, frustration, isolation, powerlessness, and helplessness are common feelings that victims experience. Reactions to the assault may vary widely. Nothing is "normal" in this situation.

Sexual assault can happen to either gender, at any age, regardless of social, economic, or educational status or race, ethnicity, religion, disability or sexual orientation. Healing from sexual assault begins when the victim is able to deal with what has happened. It often is helpful to talk about the assault with a trusted individual — a friend, family member, professional counselor, or an advocate from a sexual assault crisis center. But be assured that, as a victim, you have the right to follow your own path to healing from the event.

## TAKING CARE OF YOURSELF

- **Know that you have done nothing to provoke or cause the attack.** What is happening to you is not your fault and is not because of anything that you have or have not done. The assailant alone is responsible for the violent behavior.
- **Join a support group.** Local crisis centers are great resources and can assist you in locating a support group in your area. These groups are places where you can interact with other survivors of sexual assault.
- **Develop a support system.** Keep in touch with friends who are supportive and understanding. Tell someone about the assault. You can call your local crisis centers for support twenty-four (24) hours a day, three hundred sixty five (365) days a year.
- **You may experience stress and trauma and might want to seek assistance.** You may begin to experience feelings of rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping or eating patterns, exhaustion, or frequent crying spells. You are not going crazy. Your body and mind are reacting to the stress caused by the sexual assault. Talking to someone who is trained to work with victims and survivors may help stop some of the symptoms that are interfering in other aspects of your life. Your local crisis center has a list of people skilled in this work.

## ❖ STALKING

Anyone can be a victim of stalking –adult women and men, teenagers, children, people who are mentally or physically disabled, and the elderly, regardless of race, national origin, sexual orientation or economic status. Stalking is behavior involving a course of conduct by a person that places another person in fear or his or her safety. Immigrants and refugees have many of the same legal protections as U.S. citizens in the crime of stalking.

### STALKING IS A CRIME IN NEW HAMPSHIRE (RSA 633:3-A)

It is against the law for someone to:

- ▶ Purposely, knowingly, or recklessly engage in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of the person's immediate family, and the person is actually placed in such fear; or
- ▶ Purposely or knowingly engage in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; or
- ▶ After being served with, or otherwise provided notice of, a domestic violence protective order, a protective order, a stalking order, or a bail order that prohibits contact with a specific individual, purposely, knowingly, or recklessly engage in a single act of conduct that both violates the provisions of the order and is listed in **RSA 633:3-a, II-a.**

**Course of Conduct** means two (2) or more acts over a period of time, however short, which shows a continuity of purpose. A course of conduct does not include constitutionally protected activity, nor does it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct may include, but is not limited to, any of the following acts or a combination thereof:

- ▶ Threatening the safety of the targeted person or an immediate family member;
- ▶ Following, approaching, or confronting that person, or a member of that person's immediate family;
- ▶ Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of that person's immediate family;
- ▶ Causing damage to the person's residence or property or that of a member of the person's immediate family;
- ▶ Placing an object on the person's property, either directly or through a third person, or that of an immediate family member;
- ▶ Causing injury to that person's pet, or a pet belonging to a member of that person's immediate family; and
- ▶ Communicating to the person by telephoning, letter, note, package, mail courier service or electronic transmission, including electronic transmissions generated or communicated via e-mail.

The law is designed to help in cases where the conduct otherwise might seem acceptable, such as sending flowers or leaving a piece of candy on someone's desk, but which may cause a reasonable person to fear for her or his safety if that conduct is part of a series of unwanted or inappropriate attentions.



## GETTING HELP FOR STALKING

If you are being followed from place to place, or if you are being threatened or intimidated by someone, it is important that you take the necessary steps to maximize your safety. This may mean temporarily moving or seeking safe shelter and then reporting the stalking to the police. You also may choose to stay in your home and seek help from the police and the courts. Depending on your relationship with the stalker, you may be able to help the police or courts know if the stalker will be violent. This will help to decide what actions need to be taken. The first concern is for your safety.

Confidential, free support is available to you twenty-four (24) hours a day, three hundred sixty five (365) days a year through your crisis center. Locate the center nearest you in the directory on the inside back cover of this Handbook. Services and support provided by crisis centers are available to all people regardless of age, immigration status, race, gender, sexual orientation, national origin, religious or political beliefs, or physical or mental ability. If you need a language interpreter or other special accommodation, be sure to make this request.

Pursuant to **RSA 173-C**, information you share with a crisis center advocate must remain confidential, unless you provide written permission for the information to be released. You can disclose any information about your situation and receive help and support from an advocate without fearing that this information will be revealed to the government or any other third party. However, under **RSA 173-C**, crisis center advocates are required to report suspected or known incidences of child abuse to authorities.

## WHAT STEPS SHOULD YOU TAKE IF YOU ARE BEING STALKED?

The following is a list of steps you can take if you are being stalked.

### Secure Personal Safety

The Safety Checklist, below, will help you to identify precautions you can take to maximize your safety.

### Notify the Police

If you are being followed from place to place, threatened or intimidated by someone, call the police at 9-1-1. Request a language interpreter or other special accommodation, if necessary, so that you fully understand police and the police fully understand you. Be sure to tell the police about previous calls you have made and the results of the calls (for example, a **(protective order)** was served or the stalker was warned to stay away from you). File a complaint with the police, providing any evidence you can about your situation. The police will file a report. Be sure to request and retain a copy of the report along with the name of the officer taking the complaint.

When you call law enforcement, the police can make an arrest without a warrant if the officer has reason to believe that a new stalking episode has occurred within twelve (12) hours of your filing a report. If you have a **stalking protective order** (see below), the police *must* arrest the person. The police can make an arrest even if they do not see the events you describe.

In the event of an arrest, the stalker will be considered for bail in a court proceeding in which the stalker is the **defendant**. The bail hearing is an opportunity for law enforcement and for you to provide the court with information on

whether the defendant poses such a danger that he or she should be held on preventive detention or in restrictive conditions. In assessing this danger, the court will consider factors such as threats of suicide, acute depression, history of violating protective orders, possessing or attempting to possess a deadly weapon in violation of an order, death threats or threats of possessiveness toward another person, and cruelty or violence to pets. In the event the court determines the defendant does not pose a danger, the defendant will be released either on a written promise to appear in court or on a **bail order** that directs the defendant to pay money to ensure that he or she will appear in court. The defendant may be told to have no contact with you as part of the **bail conditions**.

Make sure to get copies of any papers from the police and courts, including arrest records, the charges that have been filed against the defendant, and the bail conditions. Write down the names of any law enforcement officers and judges involved in your case.

### **Obtain a Stalking Protective Order**

Any person, regardless of age or immigration status, may request a **stalking protective order** from the court. In addition to prohibiting the defendant from continuing the stalking behavior, the court also may consider ordering monetary compensation for losses suffered as a direct result of the stalking. This compensation may include the cost of moving and shelter expenses; lost wages; reasonable attorney's fees; medical and dental expenses; the cost of changing phone numbers; the cost of obtaining caller ID, an unlisted number or an answering machine; the cost of new locks and other security; and mental health or counseling expenses. The court also may consider prohibiting the defendant from owning or possessing firearms, ammunition or other deadly weapons. Unlike a **domestic violence protective order** (see above), the court does not have to find that the defendant poses a credible threat before issuing a protective order.

### **Document Everything**

Write down dates, times, places, and witnesses' names. Write what the stalker was doing, saying, and wearing. Note the kind of car the stalker was driving and the license plate number. If it can be done safely, take pictures of your stalker.

### **Tell Family, Friends, Neighbors and Co-Workers about the Stalking**

Describe the stalker to them. Ask them to watch for the stalker, to write down everything they see, and to give this account to you. Ask your Human Resources Director, Employee Assistance Program professional, or supervisor about your company's policies and resources to help keep you safe.

### **Save all Written Material, Legal Papers and Telephone Messages Recorded on Answering Machines**

Collect evidence of the stalking. Save and date all cards, letters, notes, and envelopes from the stalker. Save and date all messages left on answering machines. (You should know, however, that it is a crime to tape record any conversation between you and your stalker unless the stalker knows the conversation is being recorded.) Obtain and keep copies of things like warrants, protective orders, and court orders.

## SAFETY CHECKLIST

*If you are being stalked, you can maximize your safety by taking certain precautions. Your local crisis center is an important resource for safety suggestions as well as support and assistance in understanding protective legal options available to you. See the inside back cover of this Handbook to find the crisis center nearest you.*

- ☐ Change your locks, both at home and in your car.
- ☐ Avoid walking alone. Be aware of what is around you.
- ☐ Obtain a post office box and give your address and phone number to as few people as possible. If you have a rural mail delivery box, do not put your first name on the box.
- ☐ Change your daily driving routes, and keep your car doors locked at all times, whether or not the car is in use.
- ☐ Park your vehicle in well-lit areas. Get a locking gas cap, and always look in the front and rear areas before entering your vehicle.
- ☐ Know the locations of both the police and fire stations.
- ☐ Keep an emergency bag packed with clothing, money, telephone numbers, toys for children, and important papers, such as social security numbers, birth certificates, pass ports, and immigration papers.
- ☐ If possible, alert neighbors and have a pre-arranged code or signal if the stalker is near or at your home.
- ☐ Post a "NO TRESPASSING" sign on the edge of your property where it is clearly visible.
- ☐ Call the Social Security Office and discuss the possibility of changing your social security number if you feel that the stalker is using it to find you.
- ☐ Report to the telephone company any threatening calls that you, or anyone you know, receive from the stalker. Ask for their help on ways to protect your phone lines or to trace the stalker's calls. If possible, change your current telephone number to an unlisted telephone number. Ask the phone company to remove your name and phone number from both the phone book and directory assistance.
- ☐ Report all threats sent by mail to your local police.
- ☐ If you move, avoid leaving a "paper trail."
  - ▶ Do not give permission to the post office to forward mail to your new address. Make the necessary notification of your new address directly to family, friends, and businesses.
  - ▶ Take all medical records with you rather than have them forwarded via mail by the medical office.
  - ▶ Pick up personally any security deposit or rent money owed to you. Do not leave a forwarding address with your old landlord.
  - ▶ Do not give permission to the telephone company to refer calls to your new number.

- Take necessary steps to be safe at work.
  - ▶ Tell security that you are being stalked.
  - ▶ If possible, ask for a change in your work schedule or site.
  - ▶ Have the receptionist screen your calls.
  - ▶ Distribute a photograph of your stalker to your co-workers.
  - ▶ Obtain a copy of your company's safety policy. If the company does not have one, request that the local crisis center be contacted for assistance in drafting a safety policy.

## TAKING CARE OF YOURSELF

- ▶ **Know that you have done nothing to provoke or cause the stalking.** What is happening to you is not your fault and is not because of anything that you have or have not done.
- ▶ **Join a support group.** Local crisis centers are great resources and can assist you in locating a support group in your area.
- ▶ **Develop a support system.** Keep in touch with friends who are supportive and understanding. Tell someone about each encounter with the stalker. Remember, you can call your local crisis centers for support twenty-four (24) hours a day, three hundred sixty five (365) days a year.
- ▶ **You may experience stress and trauma and might want to seek assistance.** You may begin to experience feelings of rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping or eating patterns, exhaustion, or frequent crying spells. You are not going crazy. Your body and mind are reacting to the stress caused by the sexual assault. Talking to someone who is trained to work with victims and survivors may help stop some of the symptoms that are interfering with other aspects of your life. Your local crisis center has a list of people skilled in this work.

## CHAPTER 6. FAMILY LAW

Family law includes state regulations pertaining to marriage, divorce, custody, child support, and paternity. Relevant state statutes include:

- ▶ **Domestic Relations, RSA 457 to 460**, covering marriage, divorce, and custody;
- ▶ **The Uniform Act on Paternity, RSA 168:A**, covering the role and responsibility of fatherhood.

**NOTE:** Divorce and custody are very complicated areas of the law. If you own property, have a pension, retirement accounts, or other assests, or have questions about your immigratoin status, you should consult an attorney to assist you in getting a divorce. If you have children, it is especailly important to consult an attorney, as the outcome of the divorce will affect your life and the lives of your children for years to come. You should proceed carefully and not make hasty decisions or feel pressured to make decisions regarding the terms of your divorce or the custody of your children. Some of the terms of final divorce and custody orders are extremely difficult to change.

### ❖ MARRIAGE

Individuals under the age of eighteen (18) must have parental consent to marry in New Hampshire. Before a **marriage license** is issued, the couple must file a Notice of Intention in the town in which either person lives. After a three (3) day waiting period, the license will be issued. Once the license is issued, the couple has ninety (90) days to get married before the license expires. New Hampshire does not require a blood test in order to receive a marriage license.

Either member of the couple may, but is not required to, change his or her last name when getting married. Your spouse may adopt your last name, you may adopt your spouse's last name, or the two of you may combine last names. If you do change your name, it is important to notify the Social Security Office, the Department of Safety if you have a driver's license, and banks and credit card companies.

All property acquired during a marriage is considered marital property regardless of whether the title is only in one person's name.

In a **common-law marriage** a couple lives together as though they are married without having gone through a legal ceremony. The law regarding common-law marriage in New Hampshire is unusual. New Hampshire does not recognize common-law marriage during the lifetime of either partner. Only in the case of death is a common-law marriage recognized in this state. In New Hampshire, if a man and woman live together for a period of more than three (3) years and held themselves out as husband and wife, when one dies the surviving spouse may be entitled to a portion of the deceased partner's estate (**RSA 457:39**).

Laws regarding marriages in New Hampshire only apply to heterosexual couples. The state does not recognize homosexual unions.

**NOTE: Regardless of whether a couple is legally married, it is a crime in New Hampshire for a spouse to force you to engage in any kind of sexual contact or activity. It is also against the law for your spouse to injure you or threaten you so that you fear for your physical safety. If either of these has happened to you, see Chapter 5 of this Handbook.**

## ❖ DIVORCE

New Hampshire law provides three (3) distinct options to couples seeking the help of the courts to reorganize their families. These options are **civil annulment (RSA 458:1)**, **legal separation (RSA 458:26)** and **divorce (RSA 458:7)**. There is no requirement that you be legally separated prior to getting a divorce.

A **civil annulment** of a marriage is granted only under very limited and specific circumstances. A marriage can be annulled if:

1. It was illegal to begin with, because the parties were close blood relatives;
2. One of the parties was too young, males under fourteen (14), females under thirteen (13), and anyone under eighteen (18) with no parental approval;
3. One party has a reported case of gonorrhea or syphilis;
4. One party has lied to the other about something important to the marriage; or
5. One party is not divorced from a previous marriage.

The only difference between **legal separation** and **divorce** is that, at the end of a divorce, the couple is no longer married and each party is free to remarry. At the end of a legal separation, the couple is still legally married, but, as in a divorce, they have divided between the parties assets and liabilities, including property, retirement accounts, and debt.

If one spouse starts a legal separation and the other spouse cross-files for a divorce, the courts generally will grant the divorce. If a legal separation is granted, it may be changed to a divorce for good cause shown. However, a new legal proceeding must be filed.

### LEGAL HELP IN DIVORCE

There is no legal requirement that a lawyer must represent you in a divorce. **HOWEVER, IN CERTAIN SITUATIONS, PROCEEDING WITH A DIVORCE WITHOUT A LAWYER REPRESENTS A SERIOUS RISK.** You seriously should consider having legal counsel if your divorce involves issues regarding domestic violence; custody and support of children; or real estate, retirement plans or other significant assets. If you are an immigrant unsure of how the divorce will affect your status or the status of your children, you should consult an attorney before proceeding. If an attorney will represent your spouse in the divorce, you should hire a lawyer to represent you as well.

**IN ALL DIVORCE CASES**, it is highly recommended that you meet at least once with a lawyer to review your situation and to be sure that nothing important is missed in the permanent stipulation of the divorce.

### COURT COSTS & LEGAL FEES

The total cost of a divorce varies widely depending on how complex and contested the divorce is. The court charges fees for filing petitions and other documents associated with the divorce. Lawyers charge fees for providing legal services. Other expenses also may be incurred in preparing your case (for example, paying for expert testimony and witnesses).

Each person usually pays for his or her own lawyer in a divorce, although there are exceptions if one spouse has enough money to pay and the other does not.

Also, if one spouse is found by the court to be in **contempt** of an existing court order, then the court may award attorney's fees to the extent that they were paid to enforce the terms of the order.

More detailed information about the fees and costs associated with a court case as well as how to find and hire a lawyer is available in the **RESOURCE DIRECTORY** at the back of this Handbook. The **RESOURCE DIRECTORY** also provides a comprehensive listing of legal services in New Hampshire. Listed here are those agencies that provide services exclusively to individuals who cannot afford to pay a lawyer in a divorce proceeding.

- ▶ **THE LEGAL ADVICE & REFERRAL CENTER (LARC) (800-639-5290 or 603-224-6934)** handles intake and referrals to the **NEW HAMPSHIRE BAR ASSOCIATION'S PRO BONO REFERRAL PROGRAM**, which provides direct legal services for individuals and families with low incomes.
- ▶ **THE REDUCED FEE REFERRAL PROGRAM**, operated by the **NEW HAMPSHIRE BAR ASSOCIATION (603-229-0002)**, makes referrals for individuals with a moderate income that exceeds the limits of eligibility for Pro Bono representation.
- ▶ **THE DOMESTIC VIOLENCE ADVOCACY PROJECT (DVAP)** through **NEW HAMPSHIRE LEGAL ASSISTANCE (800-562-3174)** has limited resources for civil legal services for low-income victims of domestic violence, focusing on cases involving custody of children. The Project will assist victims in obtaining restraining orders, custody orders, visitation orders, modifications, child support, and divorces.

Some agencies provide free legal advice—not representation—for common legal issues related to divorce.

- ▶ **THE LEGAL ADVICE & REFERRAL CENTER (LARC) (800-639-5290 or 603-224-6934)** is staffed by attorneys and paralegals who provide legal information, advice, and referrals to other agencies.
- ▶ **THE LAW LINE OF THE NEW HAMPSHIRE BAR ASSOCIATION (603-224-6942)** is staffed by volunteer lawyers on the second Wednesday of each month between 7:00 and 9:00 p.m. for free legal information.
- ▶ **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE (603-647-1500)** provides immigration legal aid and resettlement services and information.

## **PRO SE DIVORCE**

In an **uncontested divorce**, you can represent yourself. This is called **pro se** (without a lawyer). You should obtain a Pro Se Handbook at your local library, through the **NEW HAMPSHIRE BAR ASSOCIATION (603-224-6942)**, or at your local Superior Court (see **RESOURCE DIRECTORY** for a listing of New Hampshire Superior Courts). There is a \$40 charge for the Pro Se Handbook.

The Pro Se Handbook includes the following checklist to determine the suitability of your situation to filing without a lawyer. If you answer "yes" to even one of the following questions, you should consult a lawyer before proceeding further.

### *Before Filing for Divorce:*

- ☐ Do you and your spouse have minor children and disagree on any child issues?
- ☐ Does your spouse hit, kick, or punch you or your children?
- ☐ Does your spouse threaten to hit, kick or punch you or your children?
- ☐ Are you afraid of your spouse?
- ☐ Does your spouse drink excessively or take drugs?

### *Before the Divorce is Final:*

- ☐ Are there disputed health insurance coverage issues affecting you, your spouse, or your children?
- ☐ If your spouse is in the military, do you disagree on any issues relating to the divorce?
- ☐ Do you or your spouse have any of the following?
  - ▶ Home or other real estate
  - ▶ A retirement plan (such as a 401K, IRA, or pension plan)
  - ▶ Stocks or other significant investments
  - ▶ Your own business
  - ▶ Family trusts or inherited wealth
- ☐ Do you or your spouse need alimony?

If you answered “yes” to any of these questions, or if there are other difficult factors associated with your marriage, you should consult an attorney to protect your legal rights. Remember, some of the terms of the final divorce order cannot be changed at a later time. You should not make hasty decisions regarding the terms of your divorce, or feel pressured to make any decisions you are uncomfortable with, as the outcome of your divorce case will affect the live of you and your children for years to come.

Remember, IN ALL DIVORCE CASES, even those that are pro se, it is highly recommended that you meet with a lawyer at least once to review your situation and to be sure nothing important is missed in the permanent stipulation.

## **ALTERNATIVE DISPUTE RESOLUTION**

Several Alternative Dispute Resolution (ADR) programs are available in New Hampshire to help divorcing couples arrive at a settlement for **custody, child support, alimony, and property division**. Ideally, with ADR, the couple can come to an agreement without having to take their case to trial. ADR programs use cooperative rather than adversarial techniques in resolving disputes. Therefore, they are appropriate and successful only when both parties are equally cooperative.

In certain situations, a judge may order parties to participate in ADR to resolve conflicts before a case will be scheduled for trial. You still may hire your own lawyer to help you with your divorce even if you and the other party decide to participate in ADR.

**NOTE: Under certain circumstances, alternative dispute resolution is not appropriate. The court may not order it, and parties should be cautious about participating in it, if there has been a history of**



**domestic violence, serious psychological or emotional abuse, child abuse, alcoholism, or drug abuse. If you feel that alternative dispute resolution is not appropriate in your case, be sure to notify the judge of your concerns.**

What follows are several ADR options available to New Hampshire couples.

### **Marital Mediation**

Marital mediation is an option for divorcing couples that wish to settle their disputes outside of the court. In mediation, a trained third party mediator assists couples in arriving at a fair settlement. The mediator is not on anyone's side and does not make any decisions. Instead, the mediator helps the parties to reach their own agreement.

Mediators usually charge an hourly fee, and many offer a sliding scale. The parties usually share the cost of mediation unless one person has much more money than the other. The total cost of mediation will depend on how much time is spent with the mediator. A current list of all New Hampshire-certified mediators is in each courthouse. The same information is available from the **MARITAL MEDIATION CERTIFICATION BOARD** ([www.state.nh.us/marital/index.htm](http://www.state.nh.us/marital/index.htm) or **603-271-6593**).

### **Marital Neutral Evaluation**

The SUPERIOR COURT and FAMILY DIVISION oversee the Marital Neutral Evaluation Program. Specially trained attorneys are approved by the court to act as Neutral Evaluators at the request of divorcing parties. The Evaluator assists couples in resolving disputed issues and can provide a professional, impartial opinion on what the likely outcome of an unresolved issue may be given the strengths and weakness of the case. Conversations that occur during the Neutral Evaluation are confidential and cannot be held against either party if the case goes to trial. Attorneys work as volunteers, and there is no charge for the program. For more information, contact the SUPERIOR COURT or FAMILY DIVISION in your area (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts) or visit [www.courts.state.nh.us/adrp/neutralsupedescribe.htm](http://www.courts.state.nh.us/adrp/neutralsupedescribe.htm).

### **Collaborative Law**

Although not supervised by the courts, collaborative law is an ADR in which both parties agree from the outset to resolve disputes without going to court. Each party is represented by an attorney, and negotiations are held in a series of four (4) way meetings (the two parties and their lawyers) to work out whatever issues are involved in the divorce. If the collaborative process fails because one party decides to seek litigation, both parties must find new lawyers, as collaborative law attorneys are not permitted to handle litigation. Not all lawyers practice collaborative law, and both parties must hire their own lawyer trained in collaborative law for the process to happen. For more information, contact the **COLLABORATIVE LAW ALLIANCE OF NEW HAMPSHIRE** at P.O. Box 2161, Concord, 03302. For a listing of collaborative lawyers in New Hampshire, visit [www.collaborativelawnh.org](http://www.collaborativelawnh.org).

### **THE DIVORCE PROCESS**

If both spouses are residents of New Hampshire, either spouse can file for divorce at any time to dissolve the marriage. If only one spouse lives in New Hampshire,

then that individual must have lived here for at least one (1) year before filing for divorce, unless the non-resident spouse is served with the **Petition for Divorce** while physically present in New Hampshire. An individual who is not a resident of New Hampshire cannot initiate a divorce in New Hampshire (**RSA 458:5**).

Once the divorce is filed, either spouse can move from New Hampshire without affecting the **jurisdiction** New Hampshire has over the divorce. This means that if either spouse moves out of New Hampshire the divorce case still can be heard by the court in the county where he or she formerly lived. Even if both spouses move away from New Hampshire before the divorce is final, the divorce still can proceed to the end in the New Hampshire court.

If you live in Rockingham or Grafton County, you will file for divorce in the FAMILY DIVISION (see **RESOURCE DIRECTORY** for a complete listing). A pilot program operating since 1996, the FAMILY DIVISION provides judicial resolution to such family matters as divorce, child custody and visitation, child support, legal separation, paternity, domestic violence, juvenile delinquency, child abuse and neglect, and other child-related issues.

If you do not live in Rockingham or Grafton County, you must file your divorce in the SUPERIOR COURT of the county in which either spouse lives (**RSA 458:9**). All SUPERIOR COURTS conduct a program called **SCOPE**, which offers a general overview of the court system and an introduction to specific court procedures. SCOPE meetings generally take place two Wednesdays each month and are open, free of charge, to any interested person. For more information about the SCOPE program, contact the SUPERIOR COURT Clerk in your area for times and locations (See **RESOURCE DIRECTORY** for a listing of New Hampshire SUPERIOR COURTS).

If your spouse has filed for divorce, or if you are thinking about filing for divorce, and you have questions about your immigration status and how it will be affected by the divorce, you should contact an immigration expert for advice. You should do this before signing any papers related to the divorce. For more information, contact the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** (See **RESOURCE DIRECTORY**).

## **Filing the Petition**

The first step to begin a divorce proceeding is to file a document called a **Petition for Divorce** in the appropriate court. A fee of \$125, plus a \$2 surcharge for couples with children, is charged for filing the petition.

Upon receipt of a Petition for Divorce from an individual (who is referred to as the **petitioner**), the court clerk docket the petition and opens a court file. The court will provide instruction of how the other party (who is referred to as the **respondent**) is to be notified of the divorce. The divorce cannot proceed until the respondent is notified in writing in accordance with court procedure. If you do not know the respondent's whereabouts, be sure to let the clerk know this.

A typical notification procedure might involve the court mailing a notice to the respondent, informing him or her that a divorce has been filed, and enclosing forms and instructions about the necessary steps to take. The respondent or the respondent's attorney has ten (10) days to go to the court clerk's office to pick up an official copy of the divorce petition. This process eliminates the need to have a sheriff serve papers to the respondent.

If the respondent fails to pick up the papers within the ten (10) day time period, the clerk's office will send the petitioner instructions on how to complete service through the sheriff. The sheriff's office may deliver the divorce papers to the respondent's home, or the respondent may pick up the papers at the sheriff's office. The petitioner must pay a small fee for service through the sheriff's office.

There is usually no advantage to being the spouse who files the divorce. The divorce process is designed to give both parties a fair chance to present their positions and arguments to the judge. It also is possible for couples who agree that they want to get divorced to file a **joint petition** for divorce, which eliminates the need for serving papers through the sheriff (as described above). If the parties file a joint petition for divorce, the petition is filed in the SUPERIOR COURT or FAMILY DIVISION in which at least one of the parties resides and no further service or notice is required.

A divorce can remain on file with the court for a period of up to two (2) years without any further court action. After two (2) years, if no other documents are filed, the court will dismiss the petition.

In certain extraordinary circumstances, it may be necessary to request an **ex parte** (meaning one-sided) order from the court. Such orders will be granted only if the court determines, after review of the requesting party's **affidavit**, that immediate and irreparable injury, loss or damage has occurred or is about to occur to the requesting party, the children of the requesting party, or the property of the requesting party before the adverse party or attorney can be heard in opposition to the order. An affidavit must be submitted to the court that verifies that the adverse party was notified, or a timely attempt was made to notify the other party, of an opportunity to be present.

## **Discovery & Settlement**

After the divorce is filed, the parties typically begin the process of exchanging financial information and other documentation. If one spouse is not willing to provide financial or other information that the other spouse is entitled to know, the law provides for **discovery** procedures, which can force the unwilling spouse to provide the necessary information and documentation.

**NOTE: Your immigration status will not be considered relevant by the judge in a divorce case. If your spouse requests information about your immigration status during the discovery process, you may not have to comply. You immediately should inform your lawyer of such a request.**

When both parties have all the information needed, they attempt to come to a final settlement. This can be done through each party's lawyers, in **mediation** (see above), with the help of a neutral **evaluator** (see above), or directly between the two (2) parties of the couple. The entire agreement, called a **permanent stipulation**, then must be written out in a court-specified format and signed by both parties and their lawyers if applicable. The permanent stipulation then is submitted to the court for approval.

In the FAMILY DIVISION, the law does not require a hearing if both parties waive attendance. In this situation, the divorce is effective immediately upon approval by the court. Otherwise, a brief **uncontested divorce** hearing is held where the spouse starting the divorce must appear and testify to the facts contained in the initial petition for divorce. The divorce will be finalized a few days after the final hearing. The vast majority of divorces in New Hampshire end in this way.

In cases where the parties cannot come to an agreement on all the issues, the court will schedule a **contested divorce** hearing. First, the court will hold a pre-trial conference. The court will request from each person or legal counsel a list of what issues have not been resolved, what witnesses will be called, and what amount of time will be needed for the hearing. At the time of the hearing, the judge or, in the FAMILY DIVISION, the **marital master** hears the position of each party. Several weeks after the hearing, the court will issue a decision. The decision becomes final thirty (30) days after the date of the order. This thirty (30) day window allows time for either party to file for an appeal.

## **NO-FAULT AND FAULT DIVORCE**

In the 1970s, “irreconcilable differences” was introduced as a no-fault ground for divorce (**RSA 458: 7-a**). Today, the vast majority of all divorces in New Hampshire are granted on no-fault grounds. No-fault grounds require little testimony or proof, and the divorce often is less acrimonious, less expensive, and faster to obtain.

New Hampshire law provides for thirteen (13) **fault grounds (RSA 458:7)**, including adultery, extreme cruelty, and treatment that endangers health or reason.

Fault grounds must be considered by the court when deciding issues relating to alimony or the division of property and debts between the parties. In families where there is no property, little income for alimony, and no immigration issues, filing for fault grounds serves no practical purpose. If the no-fault ground of irreconcilable differences is used, the court still will consider all of the arguments a party may make other than fault to justify an award of alimony or an unequal division of property.

## **Alimony**

New Hampshire law recognizes that one spouse may need financial support from the other spouse (**RSA 458:19**). **Alimony**, or financial support to the other spouse, can be ordered for a specified number of years (there is no legal maximum or minimum period) or indefinitely. Alimony can help a spouse obtain a better job or an education. It is not necessary to have children from the marriage for a spouse to qualify for alimony.

To determine if court-ordered alimony is necessary, two (2) important factors considered by the court are:

- ▶ The need of the spouse seeking alimony; and
- ▶ The ability of the other spouse to pay alimony after meeting his or her own reasonable needs.

Alimony is determined on a case-by-case basis, but the law requires the court to consider a number of different factors such as the length of the marriage, the needs of a homemaker or parent to maintain the home for children, fault grounds for the divorce, and tax consequences to the parties.

A motion to the court for alimony payments must be made within five (5) years of the divorce. If the court orders permanent alimony for a specific duration of time, the order may be extended provided that the petition to renew is filed within five (5) years of the termination date of the permanent alimony order.

IRS regulations state that alimony is taxable as income to the recipient and is deductible from income by the payer.

## Health Insurance

In addition to alimony, a spouse who has provided health insurance coverage during a marriage for the other spouse may be required by court order to continue to provide that coverage after the divorce. Both the federal **COBRA** law and New Hampshire state law (**RSA 415:18 VII**) require health insurance companies to make coverage available at the group rate for up to three (3) years to a divorced spouse of an employee who is a member of a group plan. This can be of great benefit to a newly divorced spouse who is unemployed or employed in a job that provides no health insurance benefits.

## Property Division

Generally speaking, the goal at the time of divorce is to divide fairly and equitably all property, including real estate, personal property, investments, and retirement plans.

**NOTE: While in the process of divorce, you are obligated to leave your spouse's things alone. Do not pack up, throw out, or destroy this property. Let the other party pack up his or her own belongings and remove them from the home. If necessary, ask for a police escort during the process.**

The division of property requires the parties to take several steps. First, the **marital estate** must be identified. The marital estate includes everything — assets as well as debts — that both of the parties own. It may not matter who owns the asset or who incurred the debt. Both of the parties are obligated to disclose all assets and liabilities. Each item in the marital estate then must be valued, including but not limited to the following:

- ▶ Real estate and business interests;
- ▶ Retirement accounts and pensions;
- ▶ Balances on mortgages and loans; and
- ▶ Personal property (furniture and furnishings).

Sometimes, an expert appraisal will be necessary to determine the true values of any of the above.

The final step of this part of the divorce is to divide the property **equitably**, or fairly, between the spouses. Equitable does not necessarily mean equal. The law provides a presumption of an equal division. However, New Hampshire law lists over fifteen (15) different factors that can be taken into consideration, which justify varying from a fifty/fifty (50/50) division (**RSA 458:16-a**).

These factors include:

- ▶ Differences in income and ways to acquire income and assets in the future;
- ▶ The needs of the custodial parent to maintain a home for the children;
- ▶ The relative contributions of the parties to the marital estate (including contributions to homemaking and raising children);
- ▶ The receipt of inheritances or gifts during the marriage;
- ▶ The value of property owned prior to the marriage and brought into the marriage; and
- ▶ The fault of one of the parties that caused the breakdown of the marriage.

The home can be one of the most difficult assets to divide. It ultimately may be placed on the market and sold. However, when there are minor children in the family and there are sufficient financial resources, the courts may be supportive of having the custodial spouse maintain the house after the divorce as a home for the children until they are out of school.

**NOTE: It is important to get competent legal advice about all available options of ownership and distribution of the value of a home, as well as the problems of the taxation of real estate, before the divorce proceedings are finalized.**

### **Debt and Bankruptcy**

Debt incurred during a marriage by either party may be considered the joint responsibility of both parties. Such debt can include credit cards, auto loans, tax liability (IRS), and home equity lines of credit. For example, credit card debt may be considered jointly owned, even if the card was issued under the name of a single spouse.

**NOTE: Creditors are not bound by divorce decrees and can and will pursue either party for payment of jointly held debt, regardless of who the court order holds responsible for the debt after the divorce.**

If your spouse receives a discharge in bankruptcy after the divorce, you still may be held responsible by creditors for any jointly held debt during the marriage. It may be beneficial for both parties to file a joint petition for bankruptcy and receive a discharge of debt prior to the divorce becoming final.

### **Retirement**

All types of retirement plans that are earned during a marriage, including pension plans, 401(k) and Keough plans, profit sharing plans, thrift savings plans, Individual Retirement Accounts (IRAs), and any other kind of tax-deferred plans or accounts, are part of the marital estate to be divided between the parties. Both the employee's contributions and the employer's contributions into the plan during the marriage are included in the division.

To receive your share of your spouse's pension or retirement plan, you may need to obtain a separate court order called a **Qualified Domestic Relations Order** (often referred to as a **QDRO** – pronounced "quadrow"). Before the divorce is finalized, you or your attorney must obtain from the administrator of the plan its requirements for a QDRO. You then will have the QDRO prepared and approved, preferably at the time of the final divorce hearing. A certified copy of the QDRO is sent to the plan administrator, who must follow the terms of the order. Every retirement plan is different, and QDRO's can be very complicated. Be sure that your case is not closed until you know the QDRO is properly in place.

## **OTHER CONSIDERATIONS IN DIVORCE**

### **Protective Orders**

If your marriage was abusive, you can request that a **restraining order** be part of the final divorce decree (**RSA 458-16**). However, it is in your best interest to seek protection under a **domestic violence protective order** under **RSA 173-B**. Domestic violence protective orders offer more protection and are enforced more easily than restraining orders obtained through a divorce. For example, a domestic violence protective order can include the relinquishment of

firearms and other weapons. See **CHAPTER 5, “DOMESTIC VIOLENCE,”** for more information on the protections offered and steps to take in obtaining a domestic violence protective order.

If you file for a divorce BEFORE filing for a domestic violence protective order, file the order in the same court where the divorce has been filed. If you file for a divorce AFTER filing for a domestic violence protective order, ask that the order be transferred to the court where the divorce will be filed.

### **Temporary Court Orders**

It can take up to a year for a divorce to be final. Divorcing couples may want to have **temporary court orders** in place during this time. Parties may be able to come to an agreement over the terms of temporary orders, eliminating the need for a hearing. If the parties are unable to come to an agreement, either party may request a temporary hearing. Within thirty (30) to sixty (60) days of the request, the court will hold a hearing and render a temporary order regarding such issues as **custody, child support, alimony**, use of vehicles, possession of real estate, and responsibility for paying bills. Temporary orders are enforceable court orders and will remain in effect until the final divorce orders replace them. A party can request a temporary hearing at the time the divorce is filed or at any time until the divorce is final.

### **Name Changes**

You can return to your former name when the divorce is final at no cost. You can ask the court to make the change. If you decide to change your name later or even change your name to something completely different, you must file a request for a change of name with the PROBATE COURT in the county where you live. There is a fee to make the change after the divorce is final.

### **Child Impact Seminar**

All parties who have children under the age of eighteen (18) are required to attend a four (4) hour seminar given in each county on the impact of divorce on children. The program provides information on the changes divorce will bring to a child's life, and the proper ways for parents to cope with these changes. The cost of the program is \$75, but a family that cannot afford the fee may have it lowered or waived. The parties do not need to attend this seminar together. Information about the seminar is provided by the clerk's office at the time the divorce is first filed.

## **THE IMPACT OF DIVORCE ON CHILDREN**

Divorce is traumatic to all members of a family, especially children who may not have the emotional and intellectual resources to fully understand the situation. If your divorce was caused by domestic violence or child abuse, your family has the added burden of healing from these wounds, and you should take advantage of all of the special resources available to stabilize the family. If your marriage dissolved for differences—and not abuse—between yourself and your spouse, you can take some steps to help ease the transition to a new family formation.

- ▶ Tell children about the divorce in a manner appropriate to their age and basic understanding. If possible, both parents should be present for this initial conversation.
- ▶ Encourage children to express how they feel about the divorce. Expect to see a variety of emotional reactions to the situation. Reassure children—frequently if necessary—that they are not the cause of the divorce.
- ▶ Keep up with routines and schedules, and continue to enforce rules and boundaries in the household. Encourage children to resume their normal activities.
- ▶ Let the children know they have the right to love both parents. Avoid blaming or disparaging the other parent while the children are present, or asking the children to take sides with one parent against the other.
- ▶ Keep interactions with the other parent businesslike and respectful. It may help to write down all agreements to avoid misunderstandings.
- ▶ Do not rely on your child for emotional support regardless of maturity. Maintain the parent-child relationship even if you feel you can talk to your child like an adult.



## ❖ CHILD CUSTODY

Parents who cannot come to a mutual agreement about child custody arrangements may need to go court to establish a child support order. According to New Hampshire law **RSA 458:17**, the SUPERIOR COURT has the authority to determine custody of children whose parents are in the process of obtaining a divorce. The SUPERIOR COURT also determines custody of children of unmarried parents. If you live in Rockingham or Grafton Counties, your custody issues will be heard in the FAMILY DIVISION (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts).

**RSA 458:17-d** allows grandparents to intervene in (become parties to) a custody case in order to request visitation or custody rights. Grandparents or other interested persons also may apply to the PROBATE COURT for a guardianship over a child whose parents are unable to care for that child.

**NOTE:** Child custody is a complicated area of the law. It is highly recommended that you consult an attorney in custody proceedings, as the outcome of these proceedings will affect your life and the lives of your children for years to come. You should proceed carefully and not make hasty decisions or feel pressured to make decisions regarding the terms of child custody. Some of the terms of a custody order can be very difficult to change once the order is finalized.

**IN ALL CHILD CUSTODY CASES**, it is always a good idea to meet with a lawyer at least once to review your situation and to be sure that nothing important is missed in the final custody order. See “Legal Help in Divorce,” above, and the **RESOURCE DIRECTORY** for information on legal services in New Hampshire.

### CUSTODIAL ARRANGEMENT MADE BY THE COURTS

This section applies to custody issues in divorce and custody disputes between unmarried parents. Some of the information also applies to grandparents. Generally, it does not apply to guardianship cases, which are less common and should be explored with an attorney. If you are an immigrant, you have many of the same legal rights to child custody as U.S. citizens.

#### Legal Custody: Joint and Sole Legal Custody

There is a presumption in New Hampshire that both of the parents of a child will share **joint legal custody**. Therefore, the court will rule for joint legal custody unless there is compelling reason not to. Although there is no actual definition of joint legal custody, generally it means that both parents have the right to access the child’s records and to be consulted regarding the major decisions of the child’s life, including medical and educational decisions.

In some circumstances, however, one parent may challenge this presumption and ask for **sole legal custody**. This is often the case with unmarried parents, especially when one parent’s judgment is impaired.

Even when sole legal custody is awarded to one parent, the other parent may be awarded access to certain information, such as medical or educational records, but will not be allowed “veto power” over the legal custodian’s decisions.

**NOTE: Alert the court to the presence of abuse in the marriage. In the event of spousal or child abuse, the court must consider such abuse in determining whether joint legal custody is appropriate.**

**(RSA 458:17, ii-c). Parents with joint legal custody must discuss major decisions, and a severe inability to communicate could be a factor for the court to consider in awarding sole legal custody.**

### **Physical Custody: Primary or Shared**

In the past, one parent was awarded “custody” and the other had “visitation” with the child after the divorce. With increased involvement of both parents in their children’s lives, **shared physical custody** is becoming more common. Over the course of a year, the children will spend approximately the same amount of time with each parent. Since there is no actual definition of shared physical custody, the parents hopefully can work out the schedule that best meets their family’s needs.

With some families, the more “traditional” approach works best. One parent is awarded **primary physical custody**, and the other parent is awarded **residual physical custodial rights**, formerly called visitation. As above, the parents hopefully can agree to what schedule works best for their children. If parents cannot agree, the court will make a determination of custodial rights. The court considers several factors to determine custodial arrangements, including:

- ▶ Qualifications and fitness of the parents or parties;
- ▶ Ability to control and direct the children;
- ▶ Age, sex, and health of the children;
- ▶ Environment of the proposed home and its likely influence on the children;
- ▶ Conduct of the parties vis-à-vis the child;
- ▶ The report of a probation or domestic relations officer regarding the family;
- ▶ The credibility, appearance and testimony of the witnesses; and
- ▶ Parents’ animosity or inability to get along.

**NOTE: Although children cannot “choose” where they will live in custody proceedings, a child’s preference and point of view is given more consideration by the Court as the child grows older. However, it is not fair to ask a child to choose one parent over the other. A child generally will not testify in court except under extraordinary circumstances and with prior court approval.**

When the court is making its decision, it will decide what is in the best interest of the child. If both parents agree with the court, they will file an agreement, known as a **stipulation**.

As of July 1, 2003, the SUPERIOR COURT and FAMILY DIVISION are authorized to order mediation for couples involved in cases where there are disputes about legal or physical child custody. However, this type of mediation is not mandatory, and if one or both parties do not want to participate in mediation, it will not be required.

**NOTE: Under certain circumstances, mediation is not appropriate. The court may not order it, and parties should be cautious about participating in it, if there has been a history of domestic violence, serious psychological or emotional abuse, child abuse, alcoholism, or drug abuse. If you feel that mediation is not appropriate in your case, be sure to notify the judge of your concerns.**

Another option available to the courts if parents cannot agree is to appoint a person, known as a **guardian ad litem (GAL)**, who will make recommendations to the court regarding the best interest of the child for custodial arrangements.

## GUARDIAN AD LITEM (GAL)

A GAL gathers information on the child's history, current circumstances, and concerns. To do this, the GAL speaks with both parents and meets with and observes the child. The GAL may speak with school representatives, therapists, supervised visitation centers, doctors, friends, relatives and others to get information about the child, the parents, and family dynamics.

GALs should undertake all actions on behalf of a child in a timely and effective manner. While acting in the best interests of a child, a GAL should be impartial, open-minded and fair. However, once the GAL has determined his or her recommendation of what is in the child's best interest, the GAL may no longer be strictly "impartial."

Generally, a GAL will file a report with the court. The report will include recommendations regarding the issues that the court has asked the GAL to investigate in the original Order of Appointment. After the report or recommendations are shared with the parents, they can attempt to reach an agreement with the GAL's help. If they cannot come to agreement, the court will hear evidence from both parents and other witnesses to reach a final decision. It is important to remember that *the GAL only makes recommendations*. It is the court that makes the decision if the parents cannot agree.

Only the court can appoint a GAL, but the court will usually accept recommendations. Your attorney can help you pick a GAL to recommend to the court

Parents are required to pay the GAL. If a parent or parents cannot afford to pay a GAL, a court fund will be used to pay the GAL. The parents will be asked to submit financial forms to the state for a determination of their ability to repay the court fund.

## DOMESTIC VIOLENCE & ABUSE: IMPACT ON CUSTODY DECISIONS

At the time custody is being determined, the abusive partner may make the point that he or she has "never hurt the children." Even if the children were never physically hurt, if they were present during **domestic violence**, they were affected by it. If abuse is present in your relationship, the court must be made aware of incidents of abuse involving the children. This includes times when the children were in the room during the assault; when something thrown at you almost hit the child; or when you were holding the child during the assault, or while being screamed at or threatened.

When domestic abuse has occurred in a relationship, the law requires that it be taken into account when determining how children will be transferred from one parent to the other. See below, under "Supervised Visitation," for more information about such transfers.

If you are awarded custody in a domestic violence case and your abusive partner does not have your current address, you may ask the court to have your record sealed, thereby preventing your partner from finding out the address. It is best to give the court the name and address of someone else to receive notices from the court.

The court, in determining custody, also will consider child abuse. Abuse and neglect proceedings (**RSA 169-C**) may be held in a DISTRICT COURT before the divorce or custody case is filed, or the allegations and petition may be filed during the custody proceedings. There also may be criminal proceedings if the **County**

**Attorney** has gone forward with prosecution. Be sure to inform the court during custody proceedings of any open cases involving abuse or neglect, especially if the case is not being heard in the same court.

**NOTE: Sexual and physical abuse of children under eighteen (18) is considered a crime. If you have reason to suspect abuse, you are required by law to report it to the Division of Children, Youth and Families (in New Hampshire at 800-894-5533; outside New Hampshire at 603-271-6556) (RSA 169-C:29).**

## **CHILD CUSTODY AND RELOCATION**

During or after a divorce, one parent may want to relocate to a new state to be closer to family or supportive friends or for better job opportunities. Moving with or away from the children may have a significant impact on the final custodial arrangements. Before moving, you must be sure to be in compliance with relocation considerations stipulated in your final divorce order. If the divorce is not final, you should be sure to get court permission for the move and to include relocation considerations in the final order of the custody agreement. Otherwise, you may be charged with **interference of custody** (see below).

With few exceptions, if one parent moves, the original court maintains jurisdiction over the case as long as at least one of the parties remains in New Hampshire.

### **Relocation Because of Violence & Abuse**

With court permission or as stipulated in a final custodial agreement, a parent may relocate with the children because of **domestic violence** or **child abuse**. In this instance, procedures allow the parent to register custody orders with the new state while keeping the family's location secret, if that is necessary. The original court still will determine custody. However, if you meet certain requirements, you may be able to have the court transfer the case to the new state. If New Hampshire is the "new state," you will need to find a lawyer familiar with the **UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA)**, the law that governs interstate custody disputes. The lawyer also should be familiar with the **FEDERAL PARENTAL KIDNAPPING ACT** (see below).

Be sure to discuss with your lawyer ways to protect your confidentiality, if your partner is abusive, while still fulfilling UCCJA requirements. Otherwise, when you file information, in accordance with UCCJA requirements, your current address will be put on public record. This means that your partner has access to finding out your new location.

### **Parental Kidnapping**

Any parent who does not have legal custody of a child and conceals the location of that child is committing parental kidnapping, a federal offense under the **FEDERAL PARENTAL KIDNAPPING ACT**. The act provides a federal parent locator service as well as penalties for kidnapping and provisions for states to enforce custody decisions of other states. If your ex-spouse has taken your child illegally, you should contact the police and then your lawyer immediately. The police will contact a U.S. Attorney in your federal district to begin the process of finding the child and, when found, prosecuting the parent. See below for more information on the steps to take for parental kidnapping.

## **In-state and Interstate Abduction**

New Hampshire law also protects children from parental kidnapping. A non-custodial parent who moves to a new state and takes the children without the court's permission is committing the crime of **interference with custody (RSA 633:4)**. Additionally, one parent may not conceal the location of the children from the other parent who has been awarded full physical custody or physical custodial rights, including visitation.

**NOTE: If a parent interferes with custody in order to protect the child from real or imminent danger, the court may consider this a defense, but only if good faith is evident. In order to show such good faith, the parent must file a petition with the courts that documents the danger to the child and requests a modification of the custody decree within seventy-two (72) hours (three (3) days) of fleeing with the children. This defense is NOT available to a parent who leaves the state with the children without the court's permission.**

## **International Child Abduction**

If your ex-spouse is a native of another country, you may be faced with the risk of your ex-spouse violating a custody order by taking the children back to his or her home country. Legal provisions may help to protect your children from **international child abduction**.

- ▶ Under federal law, both parents are required to execute any passport application for a child under the age of fourteen (14). Send a copy of your custody order to the **U.S. DEPARTMENT OF STATE, OFFICE OF CHILDREN'S ISSUES (202-736-7000)** and the office will alert you if a passport application is filed for the children.
- ▶ If passports were issued for the children prior to the divorce, you should stipulate in the final custody order that the court hold the passports and that a parent may not remove the children from the country without permission from the court or the other parent.

Children of parents from other countries, whether or not the children are U.S. citizens, are protected under the **HAGUE CONVENTION OF 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**. The Convention, signed by the U.S. and fifty-two (52) other countries, establishes procedures to return children to their home country if wrongfully removed. Contact a family law attorney, preferably one with experience in parental kidnapping, for more information.

## **Preventing and Responding to Abduction**

Some simple steps may help to protect your children from parental abduction.

- ▶ Make copies of your final divorce decree and custody order, and keep them in a safe place for easy access.
- ▶ Provide a copy of the custody order to the children's school, daycare, and after school programs. Be sure to tell staff that the children are not to be picked up by anyone but yourself.
- ▶ Provide a copy of the custody order to the **U.S. DEPARTMENT OF STATE** to prevent or flag the issuance of passports for the children. If your ex-spouse is a native of another country, provide a copy of the custody order to the embassy of that country.

- ▶ Make sure to have recent photos of the children on hand, along with copies of birth certificates and other important identification documentation.
- ▶ Keep a list of current addresses and phone numbers of your ex-spouse's relatives and friends, including those who live in another state or country.

If you have been awarded full or partial physical custody, including visitation rights, and you suspect that your ex-spouse has abducted or may be attempting to abduct your children, you should take the following steps, recommended by the **AMERICAN BAR ASSOCIATION** and the **NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN**.

**If your divorce or custody case is still pending or has not yet been filed**, and the other parent leaves the state or country with the children:

- ▶ Go to court for an **ex parte order** (emergency) to have the children returned. You must show the court that the other parent is in violation of a temporary custody order or that the removal of the children will cause them irreparable harm. If granted, the order is usually issued the same day and is enforceable by police and federal officials.

**If your divorce and custody orders have been finalized**, and the other parent leaves the state or country with the children in violation of the custody order:

- ▶ Call the police at 9-1-1 to request the issue of a warrant for the arrest of the kidnapping parent.
- ▶ Insist that the police file a missing person's report and that it be posted immediately on National Crime Information Center (NCIC) and Interpol computers. Local police departments may tell you that they need to see a final custody order before issuing a missing child report or that a waiting period is required. This is no longer true. The **NATIONAL CHILD SEARCH ASSISTANCE ACT** requires law enforcement to immediately enter a missing child report into the (NCIC) database.
- ▶ Contact the local FBI office at **617-742-5533**. If the FBI tells you that you first need a state warrant, point out that the **1993 INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT** ended that requirement.
- ▶ Contact the **NEW HAMPSHIRE ATTORNEY GENERAL'S OFFICE** at **603-271-3658**. Ask that the office request the local U.S. Attorney to issue a federal Unauthorized Flight to Avoid Prosecution (UFAP) arrest warrant. In addition, if this is an international abduction, request that the U.S. Attorney's Office revoke the passport of the kidnapping parent.

You will need to provide authorities with copies of your final custody order, along with recent photos of the children and current contact information of the kidnapping parent's family and friends.

Other resources available to you include:

- ▶ **THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN AT 800-THE LOST or 703-235-3900**, [www.icmec.co.uk](http://www.icmec.co.uk). The center maintains a missing children's database and publishes a booklet on preventing and responding to abduction.
- ▶ **THE STATE DEPARTMENT, OFFICE OF CHILDREN'S ISSUES at 202-736-7000**. Request the Department's booklet, "International Parental Child Abduction," outlining what you should do and what the office can do for you if you are faced with this situation.

## **SUPERVISED VISITATION**

In custody cases where there is a fear of abduction, a concern of physical or emotional abuse to the child, or a history of domestic violence, the court may order supervised visitation. New Hampshire has a number of **visitation centers** for families who need assistance with the following services:

- ▶ Fully supervised on-site visits;
- ▶ Semi-supervised on-site visits; and
- ▶ A supervised exchange of the children.

There is a cost for services, so be sure the court order includes specific information about who will pay for the visits or exchanges.

Not all centers provide the same services, and not all centers can accommodate non-English speaking persons. Call the center first to be sure it can accommodate the specific services you require.

### **NEW HAMPSHIRE VISITATION CENTERS**

HOURS & SERVICES VARY. PLEASE CALL CENTERS BEFORE VISITING.

#### **ALL OUR KIDS SUPERVISED VISITATION CENTER**

24 Vernon Street, P.O. Box 371, Keene, NH 03431  
(603) 357-4661

#### **EMERGE FAMILY ADVOCATES**

(serving Grafton County and Sullivan County, NH)  
P.O. Box 1224, White River Junction, VT 05001  
(802) 296-7663

#### **YWCA SUPERVISED VISITATION AND EXCHANGE CENTER**

27 Lowell St., Suite 302, Manchester, NH 03103  
(603) 296-0457

#### **GREATER NASHUA SUPERVISED VISITATION CENTER**

15 Prospect St., Nashua, NH 03060  
(603) 889-6147

#### **THE MERRIMACK COUNTY VISITATION CENTER**

(serving Franklin, Concord, and Henniker)  
249 Pleasant St., Suite 2, Concord, NH 03301  
(603) 223-9907

#### **THE SALEM VISITATION CENTER**

9 Veteran's Memorial Parkway  
P.O. Box 344, Salem, NH 03079  
(603) 893-5432

## ❖ CHILD SUPPORT AND PATERNITY

Both married and unmarried parents are responsible for providing financial support for their children. This is true even if the court has restricted a non-custodial parent's visitation or custody rights. Child support must be paid until children are eighteen (18) or terminate their high school education, whichever happens later.

**NOTE:** Child support and paternity are complicated areas of the law. It is highly recommended that you consult an attorney in these proceedings, as the outcome will affect your life and the lives of your children for years to come. You should proceed carefully and not make hasty decisions or feel pressured to make decisions regarding the terms of child support and paternity. Some of the terms of a child support order can be very difficult to change once the order is finalized.

**IN ALL CHILD SUPPORT AND PATERNITY CASES**, it is always a good idea to meet with a lawyer at least once to review your situation and to be sure that nothing important is missed in the final order. See "Legal Help in Divorce," above, and the **RESOURCE DIRECTORY** at the back of this Handbook for information on legal services in New Hampshire.

In addition, if you cannot afford legal representation, you can apply for child support services through the **DIVISION OF CHILD SUPPORT SERVICES (DCSS)**, a state agency charged with locating absent parents, determining paternity, establishing and enforcing a child support order, and collecting and distributing support payments. See the end of this section for more information about how to apply for the services of DCSS.

### ESTABLISHING CHILD SUPPORT

Parents who cannot come to a mutual agreement about child support arrangements may need to go to court to establish a child support order. In addition, the **DIVISION OF CHILD SUPPORT SERVICES (DCSS)** may file a case against a non-custodial parent when the Division is providing the children or the custodial parent with public assistance or Medicaid.

**NOTE: Under certain circumstances, a parent may have good cause not to seek child support and may request that the Division of Child Support Services not file for support. See below for more information about good cause exceptions.**

### Child Support Guidelines

New Hampshire applies **child support guidelines** in all child support cases, including divorce, paternity, and shared custody. The formula is based on the **adjusted gross income** of both parents (**RSA 458-C**). Adjusted gross income means gross income minus court-ordered support actually paid, fifty (50) percent of self-employment tax paid, one hundred (100) percent of the cost of medical insurance for the children, mandatory retirement payments, state income tax paid, and day care expenses paid.

Gross income is generally income from all sources, as reported to the court by each parent in a sworn financial affidavit. Either parent may request verification of the other's income with wage stubs, tax returns, and other relevant documents. Public assistance benefits are not counted as income. Overtime income is included unless it is occasional or seasonal.



The total support obligation is a percentage of both parents' adjusted gross income after taxes and withholdings are deducted. The number of children determines the percentage. For one (1) child, the percentage is twenty-five (25) percent; for two (2) children, thirty-three (33) percent; for three (3) children, forty (40) percent; and for four (4) or more children, forty-five (45) percent.

The total child support obligation is divided between the parents in proportion to their respective incomes after allowable adjustments and deductions have been made. Work-related childcare expenses are deducted from the income of the parent incurring that expense, which reduces that parent's share of the obligation.

As part of determining what support must be paid for a child, the court also must decide what health insurance is to be provided and how uninsured medical expenses are to be paid (**RSA 458-17 IX**).

Visit the web site of the Division of Child Support Services for  
([www.dhhs.state.nh.us/DHHS/DCSS/default.htm](http://www.dhhs.state.nh.us/DHHS/DCSS/default.htm))  
**A GUIDELINE WORKSHEET AND CHILD SUPPORT CALCULATOR**

Although the amount of the child support order is presumed to be the figure determined by the guideline formula, the court has the discretion to increase or lower that figure if it finds there are special circumstances making the guideline amount inappropriate or unjust. Reasons for adjustment include:

- ▶ Extraordinary medical expenses;
- ▶ Significantly high or low income of either parent;
- ▶ Shared custody; or
- ▶ Extraordinary transportation costs.

The parents themselves may agree to deviate from the guideline amount if there are special circumstances, but the court must make a written finding that the application of the guideline would be inappropriate or unjust. Note that a parent receiving public assistance benefits cannot agree to deviate from the guideline amount without the written consent of an attorney from the **DIVISION OF CHILD SUPPORT SERVICES**.

### **Changing a Child Support Order**

The court may review the amount of child support every three (3) years, or earlier, upon request, if either parent's financial circumstance changes substantially. Although the court may consider the needs of any additional children a parent may be required to support, the children in the initial family of the parent paying support are entitled to a standard of living equal to that of the parent's subsequent families (**RSA 458-C:1, II**).

### **Enforcing a Child Support Order**

Either parent can be ordered to pay child support. All parents who pay support must notify the court, in writing, of any change of address within fifteen (15) days of the change (**RSA 161-B:9**). Notification should be sent to the court that established the initial order of support.

## Income Assignment

All child support orders are subject to immediate **income assignment** in which a designated amount of pay is withheld automatically from the paycheck of the person paying support and sent directly to the other parent (**RSA 458-B:2**). The income assignment shall be suspended under certain circumstances: by written agreement of both parties; by establishing automatic deposit for support payments; or by court order if the court determines that income assignment is not in the best interest of the child. Income assignment may not be waived, however, if the children are receiving public assistance.

## Contempt of Court in Support Orders

In cases where child support payments are not being made, a custodial parent can file a petition for **contempt** of court. Based on this contempt petition, the court may do any or all of the following:

- ▶ Impose an income assignment on the parent's earnings;
- ▶ Order property be sold so that child support payments can be made;
- ▶ Require the parent to make payments immediately or be jailed until support is paid; and
- ▶ Order support payments to come directly through the **DIVISION OF CHILD SUPPORT SERVICES**.

If the parent is found in contempt, the parent who filed the petition can request from the court that the other parent pay attorney's fees.

## THE DIVISION OF CHILD SUPPORT SERVICES

The **NEW HAMPSHIRE DIVISION OF CHILD SUPPORT SERVICES (DCSS)** provides services to individuals who otherwise cannot afford legal representation in establishing and enforcing child support. These services are available whether or not the parent who owes support lives in New Hampshire.

If a parent is receiving public assistance, such as welfare, child support services through DSCC are provided automatically. Any parent not receiving public assistance may apply for services by filling out an application and forwarding it to the nearest DSCC district office. Applications may be picked up at the local office or by calling **800-852-3345, ext. 4427**.

When child support orders are enforced by DCSS, the custodial parent will need to provide the Division as much information about the non-custodial parent as possible, including the parent's full name, nicknames, social security number, date of birth, current and previous addresses, and current and past employers.

DCSS has several ways in which to enforce an order, including but not limited to:

- ▶ Imposing an income assignment;
- ▶ Reporting delinquent support payers to credit bureaus;
- ▶ Intercepting IRS tax refunds, lottery winnings, financial institution accounts; or
- ▶ Revoking occupational, professional, and other licenses.

If the non-custodial parent lives out of state, the Division can ask the other state to enforce New Hampshire orders using the same methods available to collect support in-state through the use of the **UNIFORM INTERSTATE FAMILY SUPPORT ACT (RSA 546-B)**.

As resources permit, DCSS may take non-custodial parents to court for contempt and seek an order for the non-custodial parent to pay support immediately, or be jailed.

### **“Good Cause” in Domestic Violence Cases**

If domestic abuse is part of your relationship with a parent ordered to pay child support, the services provided by DCSS may be of significant benefit to you. For example, you can ask the court to have support payments made through DCSS in order to minimize your contact with the abusive partner and to prevent your address from being disclosed.

If you are a victim of domestic violence and you are applying for public assistance, you should seek good cause if you fear that pursuing child support may be dangerous to you and your children. With **good cause**, you can request that DCSS not contact your abusive partner for support. Without such good cause, the DCSS will expect your cooperation in establishing a child support order, and you will not be eligible for public assistance benefits or Medicaid until you provide the state with the name and address of the non-support paying parent.

## **DIVISION OF CHILD SUPPORT SERVICES**

### **Belknap County**

65 Beacon Street West  
Laconia, NH 03247  
Phone: (800) 322-2121

### **Carroll County**

75 Hobbs Street  
Conway, NH 03818  
Phone: (800) 552-4628

### **Cheshire County**

809 Court Street  
Keene, NH 03431  
Phone: (800) 624-9700

### **Coos County**

219 Main Street, Suite 2  
Berlin, NH 03570  
Phone: (800) 972-6111

### **Grafton County**

80 North Littleton Road  
P.O. Box 260  
Littleton, NH 03561  
Phone: (800) 552-8959

### **Hillsborough County North**

361 Lincoln Street  
Manchester, NH 03103  
Phone: (800) 852-7493

### **Hillsborough County South**

19 Chestnut Street  
Chester, NH 03036  
Phone: (800) 852-0632

### **Merrimack County**

Div. of Child Support Services  
40 Terrill Park Drive, Unit 1  
Concord, NH 03301  
Phone: (800) 322-9191

### **Rockingham County**

Div. of Child Support Services  
30 Maplewood Ave., Suite 200  
Portsmouth, NH 03801  
Phone: (800) 852-7492

### **Strafford County**

Div. of Child Support Services  
150 Wakefield Street, Suite 22  
Rochester, NH 03867  
Phone: (800) 862-5300

### **Sullivan County**

Div. of Child Support Services  
17 Water Street, Suite 301  
Claremont, NH 03743  
Phone: (800) 982-1001

## ❖ PATERNITY

**Paternity** means fatherhood. Establishing paternity means a man is legally determined to be the father of a child. When paternity is established, a child may benefit:

1. Financially, by becoming legally eligible for child support, certain disability benefits and inheritance rights;
2. Medically, through rights to the father's health insurance benefits and access to information about the father's medical history; and
3. Emotionally, through gaining a sense of identity and belonging.

Establishing paternity legally benefits a child. Once paternity is established, the father is liable, to the same extent as the father of a child born to married parents, for the education and support of the child (**RSA 168-A:1** and **RSA 460:29**).

### HOW TO ESTABLISH PATERNITY WITHOUT GOING TO COURT

Unmarried parents can establish voluntarily the paternity of a child by filing a notarized affidavit with the clerk of the city or town where the child was born (**RSA 168-A:2**). The affidavit is a sworn agreement about paternity. Neither parent should sign it if either has any doubts about the truth of the affidavit. The **FEDERAL WELFARE ACT OF 1996** requires anyone signing an affidavit be given sixty (60) days to change his or her mind and rescind the affidavit.

The affidavit of paternity has the same legal effect of establishing paternity as a court order. When the affidavit is filed, the father's name is added to the child's birth certificate. Once this is done, any further modifications of the birth certificate must be done by a court order.

A mother cannot be required by hospital personnel or anyone else to put her husband's name on the birth certificate if the husband is not the biological father of the child. The husband, however, is legally presumed to be the father if nothing further is done. Paternity in these situations can be declared by the mother, father and husband by filing a three way affidavit of paternity with the clerk of the city or town where the child was born. If they cannot agree, the court must decide.

### HOW TO ESTABLISH PATERNITY IF THERE IS A QUESTION OR DISAGREEMENT

If there is a question about paternity, a petition may be filed in the SUPERIOR COURT or FAMILY DIVISION to determine paternity. The petition may be filed by a parent, the child or an agency which has provided support for the child (**RSA 168-A:2** and **RSA 460:29**). The court can order paternity testing as it sees fit or if a party to the case requests it. Testing is not one hundred (100) percent accurate, but it can establish a probability of paternity greater than ninety-nine (99) percent.

**THE DIVISION OF CHILD SUPPORT SERVICES** can assist applicants for services in establishing paternity by filing petitions, funding paternity testing if the parties cannot afford it, and scheduling court-ordered testing with a laboratory with which it has a contract for testing. Custodial parents receiving public assistance benefits or Medicaid must cooperate in proving paternity unless they are excused because of **good cause** (see above). Exemptions from cooperation for good cause can include cases where there is risk of serious harm to the child or the mother due to abuse of either or both, or if a child was conceived as a result of **incest** or **sexual assault**.

## CHAPTER 7. CRIMINAL LAW

A criminal case is a court action made by the state against a person who has been charged with committing a crime, such as violations of a **protective order** or **sexual assault**. If there is enough evidence, the state may prosecute the case. This is done at no cost to the victim. If the court finds the **defendant** guilty, a punishment (or **sentence**) will be issued. The sentence depends upon the defendant's criminal record as well as the severity of injuries to the victim. Sentences do not always include jail time, but a criminal action is part of the defendant's criminal record.

New Hampshire also has a hate crime law (**RSA 651:6**), which may enhance or upgrade a sentence if the court finds that the defendant was motivated to commit the crime because of hostility toward the victim's religion, race, religion, sexual orientation, national origin or sex.

If you are an immigrant, you are entitled to many of the same legal rights as U.S. citizens in criminal proceedings. Further, if you are not married to a U.S. citizen or legal permanent resident, but you have been a victim of a crime and you assist in the prosecution, you may be able to apply for a U Visa. However, it is highly recommended that you consult with an immigration expert before submitting a U Visa application. For immigration advice, contact the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** (See **RESOURCE DIRECTORY** for more information).

If you are a victim of domestic violence, sexual assault, or stalking, please see **CHAPTER 5** of the Handbook for information on how these cases proceed through the courts.

Crimes are classified as either **misdemeanors** (crimes punishable by one year or less in jail or fines under \$2,000.00) or **felonies** (crimes punishable by more than one year in jail or fines higher than \$2,000.00). A member of the police force or a lawyer representing the city or town prosecutes misdemeanor cases in DISTRICT COURT. The **County Attorney** in SUPERIOR COURT prosecutes felony cases before a jury after a preliminary DISTRICT COURT and **probable cause hearing**.

### ❖ VICTIM SUPPORT IN THE CRIMINAL JUSTICE SYSTEM

Anyone can be a victim of a crime – adult women and men, teenagers, children, people who are mentally and physically disabled, and the elderly, regardless of race, nation of origin, sexual orientation or economic status. Resources may be available if you are the victim of a crime in New Hampshire.

### NEW HAMPSHIRE CRIME VICTIMS' RIGHTS

A victim of a **felony** crime in New Hampshire, including some forms of sexual assault, is entitled to certain rights under the **NEW HAMPSHIRE CRIME VICTIM'S BILL OF RIGHTS (RSA 21-M:8-K)**.

According to state law, victims have the right to:

1. Be treated with fairness and with respect for their dignity and privacy throughout the criminal justice process;
2. Be informed about the criminal justice process and its progress;
3. Be free from intimidation and be reasonably protected from the accused throughout the criminal justice process;

4. Be notified of all court proceedings;
5. Attend all trials and other court proceedings the accused has the right to attend;
6. Confer with the prosecution and be consulted about the disposition of the case, including plea bargaining;
7. Have inconveniences associated with participation in the criminal justice process minimized;
8. Be notified if presence in court is not required;
9. Be informed about available resources, financial assistance, and social services;
10. Be restituted under **RSA 651:62-67** or any other applicable state law, or victim's compensation, under **RSA 21-M:8-h** or any other applicable state law, for losses;
11. Be provided with a secure, but not necessarily separate, waiting area during court proceedings;
12. Be advised of the progress of the case and the final disposition;
13. Have home address, place of employment, and other personal information kept confidential;
14. Have property promptly returned once it is no longer needed as evidence;
15. Have input in the probation pre-sentence report;
16. Appear and make a written or oral **victim impact statement** at the sentence hearing of the defendant;
17. Be notified of the date and time of an appeal, have the appeal process clearly explained, attend the appeal hearing, and be told the result of the appeal;
18. Be notified of and allowed to attend sentence review hearings and sentence reduction hearings;
19. Be notified of any change of status such as prison release, transfer from one area of the state to another, or escape and the date of the parole board hearing. This right must be requested in writing by the victim or through a victim/witness advocate; and
20. Address or submit a written statement for consideration by the parole board on the defendant's release and be notified of the decision of the board. This right must be requested in writing by the victim or through a victim/witness advocate.

## **VICTIM/WITNESS ADVOCATES**

If your case goes to the **County Attorney's** office for prosecution, a **Victim/Witness Advocate** will be assigned to you. Victim/Witness Advocates work as part of the prosecutor's office to assist victims in securing their rights under the **NEW HAMPSHIRE CRIME VICTIM'S BILL OF RIGHTS**.

## **NEW HAMPSHIRE VICTIM/ WITNESS ASSISTANCE PROGRAMS**

### **BELKNAP COUNTY VICTIM/ WITNESS**

Belknap County Superior  
Courthouse  
64 Court Street  
Laconia, NH 03246  
(603) 527-5440

### **CARROLL COUNTY VICTIM/ WITNESS**

P.O. Box 218  
Ossipee, NH 03864  
(603) 539-7769

### **CHESHIRE COUNTY VICTIM/ WITNESS**

P.O. Box 612  
Keene, NH 03431  
(603) 352-0056

### **COOS COUNTY VICTIM/ WITNESS**

55 School Street, Suite 102  
Lancaster, NH 03584  
(603) 788-3812

### **GRAFTON COUNTY VICTIM/ WITNESS**

3801 Dartmouth College Highway  
North Haverhill, NH 03774  
(603) 787-2193

### **HILLSBOROUGH COUNTY VICTIM/WITNESS**

Northern District  
300 Chestnut Street  
Manchester, NH 03101  
(603) 627-5605

### **HILLSBOROUGH COUNTY VICTIM/WITNESS**

Southern District  
30 Spring Street  
Nashua, NH 03060  
(603) 594-3256

### **MERRIMACK COUNTY VICTIM/ WITNESS**

4 Court Street  
Concord, NH 03301  
(603) 228-0529

### **NH DEPARTMENT OF CORRECTIONS VICTIM SERVICES**

P.O. Box 1806  
Concord, NH 03302-1806  
(603) 271-1937

### **NH STATE POLICE VICTIM/ WITNESS ADVOCATE**

10 Hazen Drive  
Room 306  
Concord, NH 03305  
(603) 271-2663

### **OFFICE OF VICTIM/ WITNESS ASSISTANCE**

Attorney General's Office  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3671

### **ROCKINGHAM COUNTY VICTIM/WITNESS**

Rockingham County  
Attorney's Office  
P.O. Box 1209  
Kingston, NH 03848-1209  
(603) 642-4249

### **STRAFFORD COUNTY VICTIM/ WITNESS**

P.O. Box 799  
Dover, NH 03821  
(603) 749-4215

### **SULLIVAN COUNTY VICTIM/ WITNESS**

Sullivan County  
Attorney's Office  
14 Main Street  
Newport, NH 03773  
(603) 863-8345

### **U.S. ATTORNEY'S OFFICE VICTIM/WITNESS PROGRAM**

District of New Hampshire  
55 Pleasant St., Suite 352  
Concord, NH 03301  
(603) 225-1552

## NEW HAMPSHIRE VICTIMS' COMPENSATION PROGRAM

Victims and survivors of a violent crime in New Hampshire may apply for **compensation** from the **NEW HAMPSHIRE VICTIMS' ASSISTANCE COMMISSION**. Victims may request up to \$10,000.00 in compensation for hospital and medical expenses, funeral expenses, loss of wages or other out-of-pocket expenses. Victims also may be eligible for up to \$3,000.00 in mental health therapy costs. In order to qualify, the victim must have no other form of third party payment (for example, life insurance or medical insurance). Property losses are not covered.

You may be eligible for compensation if:

1. The crime resulted in personal injury or death;
2. You or your loved ones did not contribute in any way to the personal injury or death;
3. Your compensable expenses are more than \$100;
4. The crime was reported to law enforcement within five (5) days of the incident (except in special circumstances); and
5. A claim for compensation was filed within one (1) year of the crime, unless circumstances beyond your control kept you from doing so.

For more information, or to request an application, contact the **NEW HAMPSHIRE VICTIM'S ASSISTANCE COMMISSION** at the **DEPARTMENT OF JUSTICE** at **800-300-4500** or **603-271-1284**.

The program also will cover up to ten (10) days of imminent survival needs and relocation expenses for individuals fleeing sexual or domestic violence. These payments **MUST** be arranged through a local crisis center. See the inside back cover of this Handbook for the crisis center in your area.

## ❖ YOUR RIGHTS AND LAW ENFORCEMENT OFFICERS

If you are accused of a crime, arrested, or asked to go to the police station by a police officer, remember the four (4) rules outlined below.

1. **Do not resist arrest**, even if you think you have done nothing wrong. Resisting arrest is against the law and may lead to additional charges against you. Never run from an officer or other government agent. Even if you feel your legal rights are being denied, do not cause a confrontation that could be understood as resisting arrest.

By law, the police may detain you without arresting you. For example, the police may stop you on the street to question you if they have reasonable suspicion of a crime. While you are being detained, the police are entitled to pat down the outside of your clothes, or "frisk" you. If the police search you further, do not resist. At this point, the officer may let you go or may put you under arrest. An arrest occurs when the officer takes you into custody or otherwise deprives you of your freedom. Never resist arrest or interfere with the arrest of another person.

2. **You do not have to answer any questions**, except to give your name and address. You do not have to make or sign any statements. The fact that you refuse to answer questions cannot be used against you in court. Only a judge has the legal authority to order you to answer any questions.



3. **You have the right to a lawyer.** Request a lawyer immediately after being placed under arrest. Once you ask for a lawyer, the police cannot ask you any further questions until your legal counsel arrives. If you cannot afford a lawyer, the court will appoint one to represent you. You have the right to make a phone call. You also have the right to privacy during this phone call. If you do not have the phone number of a lawyer, call a person you can trust to find you a lawyer. (See the **RESOURCE DIRECTORY** for information on legal services in New Hampshire).

4. **You do not have to consent to a search** of your home or car. A **warrant** is an order issued by a judge, magistrate or justice of the peace directing the police to arrest a certain individual or to search a particular place. If a police officer wants to search your *home*, ask to see the search warrant. Read the warrant to be sure that the police are at the correct address.

A police officer may search you, your home, or your property without a warrant if you consent to the search. You have the right to refuse to consent, but the officer is not obligated to inform you of this right.

If you are arrested in your *car*, the officer may conduct, under certain circumstances, a limited search of your car without a search warrant. If you have not been arrested and an officer wants to search your car, tell the officer if you do not consent to the search.

It is important to know that a person in your house, such as a guest, can legally consent to a search of your house if the police believe that person has the authority to give consent. Also, an employer can consent to a search of your office without your permission.

If the officer has a search warrant, do not try to physically interfere with the search because you likely will get arrested. If you tell the officer that you do not consent to a search, the search will be limited to only those specific areas authorized in the warrant.

Documented and undocumented immigrants have many of the same legal rights as U.S. citizens. Follow the four (4) rules above if you are arrested or otherwise detained by a government agent. You have the right not to answer questions asked by a police officer or government agent on the street, in your home, at your place of employment, or in a police station. If the police ask about your immigration status or where you were born, you have the right not to answer. You have the right to legal representation while being questioned by and before making any statements to the police. You do not have to sign any documents without having a lawyer present.

If you do not speak English, you have the right to an interpreter so that you fully understand the police officer and that the police officer fully understands you. Do not rely on a member of your family to interpret for you. It is the responsibility of the law enforcement agent to provide an interpreter for you.

### **What Are Miranda Rights?**

Once you are under arrest, or in the presence of the police and not free to leave, the police must tell you about your Miranda rights before they can question you further. These rights are:

- ▶ The right to remain silent;
- ▶ The warning that anything you say will be used against you in court;
- ▶ The right to have an attorney; and,
- ▶ The right to have an attorney present before any questioning.

If police fail to follow the Miranda requirements, any information you give them may be inadmissible in court. However, failure to give Miranda warnings does not automatically make your arrest illegal or require that the charges against you be dismissed. Therefore, it is best to talk to an attorney before making any statements to law enforcement officials.

For more information, contact the **NEW HAMPSHIRE BAR ASSOCIATION** at **603-224-6942** to request the pamphlet, "You Are Under Arrest: Do You Know Your Rights?"

## **POLICE MISCONDUCT**

Whenever a law enforcement officer stops you, you first should make sure the individual is an official agent by requesting to see a badge or identification card. Write down the officer's name and badge number.

Law enforcement officials may not discriminate because of national origin, race, color, religion, or sex. The **EQUAL PROTECTION CLAUSE** of the United States Constitution, the **OMNIBUS CRIME CONTROL AND SAFE STREETS ACT** of 1968, and Title VI of the **CIVIL RIGHTS ACT OF 1964** specifically prohibit such action by any police department receiving federal funds through the **U.S. DEPARTMENT OF JUSTICE**.

If you are injured by a police officer, see a doctor and get photographs of the injuries as soon as possible. Record, document and describe any case of police misconduct in a typewritten statement and have your summary of the incident notarized within seventy two (72) hours.

Police misconduct complaints can be filed through several avenues in the **OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF JUSTICE**:

### **TITLE VI INFORMATION LINE**

P.O. Box 66560  
Washington, D.C. 20035-6560  
888-848-5306

### **OFFICE OF JUSTICE PROGRAMS**

Washington, D.C. 20531  
202-307-0690

### **SPECIAL LITIGATION SECTION**

P.O. Box 66400  
Washington, D.C. 20035-6400  
202-514-6255

# **RESOURCE DIRECTORY**

## **❖ SERVICE PROVIDERS: WORKING WITH TRAINED LANGUAGE INTERPRETERS**

## **❖ THE EARNED INCOME CREDIT**

## **❖ LEGAL SERVICES IN NEW HAMPSHIRE**

**FINDING AND HIRING A LAWYER**

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## **❖ STATE AND FEDERAL AGENCIES**

## **❖ NEW HAMPSHIRE COURTS**

**SUPERIOR COURTS**

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**FAMILY DIVISION**

## **❖ NEW HAMPSHIRE PUBLIC DEFENDERS**



## ❖ SERVICE PROVIDERS: WORKING WITH TRAINED LANGUAGE INTERPRETERS

Language and cultural barriers can prevent individuals and families from full access to essential social services. Additionally, the quality of service often depends on clear communication. Without a shared language, communication only can be achieved through a trained interpreter.

**TITLE VI OF THE U.S. CIVIL RIGHTS ACT OF 1964**, states that “...no person in the United States shall, on grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” **THE DEPARTMENT OF HEALTH AND HUMAN SERVICES** considers lack of interpretation services a form of discrimination. The **OFFICE FOR CIVIL RIGHTS** states that failure to remove language barriers constitutes a violation of equal access and a denial of services: “To avoid such discrimination against LEP [Limited English Proficiency] persons, a recipient [of Federal funds] must assume the responsibility for providing bilingual staff or interpreters.”

Any agency that receives federal funds is obligated by Title VI to supply trained interpreters for clients who need them in order to acquire services equitable to English-speaking clients. Federally assisted programs include the State Children’s Health Insurance Program (SCHIP), Medicare, Medicaid, Temporary Assistance to Needy Families (TANF), Head Start, public schools, basic health care such as hospitals and clinics, law enforcement and other governmental agencies.

### INTERPRETER SKILL REQUIREMENTS

Studies have shown that many errors occur when service providers use untrained interpreters. Interpretation skills are much more than simple translation. They include:

- ▶ **Cultural knowledge.** Service providers and interpreters should have knowledge of cultural beliefs and practices and integrate this knowledge into service delivery.
- ▶ **Cultural interpretation.** Service providers and interpreters must be able to interpret western concepts into the cultural framework of the client and respond appropriately to client questions and concerns.
- ▶ **Language skills.** Interpreters must be fluent in English and the client’s primary language; familiar with formal and slang terms in the client’s language; and able to communicate with people of different economic classes and educational backgrounds.
- ▶ **Specialized terminology and concepts.** Interpreters must be familiar with the terminology and concepts of the field. Providers working with interpreters must be able to communicate in a way that clients can understand.
- ▶ **Consumer rights.** Service providers and interpreters must be familiar with client rights, particularly the right to confidentiality. This is particularly important in smaller communities where many people are related and tend to know each other.
- ▶ **Client—Service Provider—Interpreter dynamics.** Service providers and interpreters must understand and be sensitive to the dynamics involving clients, providers and interpreters. This can involve practical issues such as how to arrange seating, and emotional issues such as how to best discuss sensitive topics like sexuality or mental health problems.

## **GUIDELINES FOR SERVICE PROVIDERS**

### **WORKING WITH AN INTERPRETER**

- ▶ Use an interpreter if you are not fluent in the client's language.
- ▶ Avoid recruiting other clients to translate. If you must use another client, ask each person separately if they are comfortable with the arrangement.
- ▶ Be cautious about using staff untrained in interpreting. They may be unfamiliar with your professional terminology or uncomfortable with serving as an interpreter.
- ▶ Be cautious about using family members to interpret, particularly members of different generations or genders.
- ▶ Use a professional translator whenever possible. Ideally the translator will be the same sex and same age or older as the client. Brief the interpreter about any necessary background ahead of time. Ask the interpreter to brief you on basic greetings and courtesies.
- ▶ Translation is not for in-person meetings only. Use telephone translation if you are not fluent in the client's language.
- ▶ When using a translator:
  1. Look at the patient, not at the translator. Address the patient directly.
  2. Avoid using "jargon" or specialized terms of your profession.
  3. Use nonverbal communication as much as possible. Your tone and facial expressions can convey important messages.
  4. Expect a translated conversation to take longer than it would to speak directly to your client. Expect the rhythm of the conversation to be slow. The client must first think through the translation, and then formulate a response. You, in turn, will need to do the same.
  5. Avoid long uninterrupted monologues. They are much more difficult to process and, therefore, to respond to.
  6. The client's response should be more than a yes or no. If not, ask for clarification and elaboration.
  7. Provide instructions in the form of lists, preferably in the client's own language.
  8. Avoid idioms.
  9. Speak slowly and articulate each word. Avoid the tendency to speak loudly, as this may be interpreted as hostility.
  10. Use short, simple, concrete sentences. Use active verbs with clear sentence subjects.
  11. Expect mistakes.

### **TRANSLATION SERVICES**

If you or a client is in need of a language interpreter in a non-emergency situation, you can contact the **LANGUAGE LINE** at **800-752-6096**. The service provides three (3) way telephone interpretation in more than one hundred and fifty (150) languages twenty-four (24) hours a day, seven (7) days a week. Certified Medical Interpreters also are available through the service.

In an emergency, you should dial 9-1-1 and request a telephone translator. For urgent non-emergency services, dial **603-271-7081** and request a 9-1-1 supervisor.

## ❖ THE EARNED INCOME TAX CREDIT

The Earned Income Tax Credit (EITC) is a tax credit offered through the federal tax system intended to reward work among low-income families, especially those with children. Those who qualify can pay less federal tax, or no tax, or get a tax refund. To qualify, you must meet certain rules and file a tax return, even if you do not owe any tax or did not earn enough money to file a tax return.

In most cases, any EITC payments you receive will not be counted as income to determine eligibility for Medicaid, Supplemental Security Income (SSI), food stamps, low-income housing, or most Temporary Assistance to Needy Families (TANF) payments. However, if you do not spend your EITC payment within a certain period of time, for TANF and Medicaid it may count as an asset (or resource) and affect your eligibility.

To qualify, the tax filer must meet the following criteria:

- ▶ Have a valid social security number;
- ▶ Cannot file taxes as “married filing separately;”
- ▶ Must be a U.S. citizen or a resident alien all year; or a nonresident alien married to a U.S. citizen or a resident alien and filing a joint return;
- ▶ Cannot file Form 2555 “Foreign Earned Income” or Form 2555-EZ;
- ▶ Cannot have an investment income of more than \$2,660 for 2003 tax returns; and,
- ▶ Must have earned income from employment or self-employment.

You also must meet certain income requirements. For 2003 tax returns, both earned income and adjusted gross income must have been:

- ▶ less than \$29,966 for a taxpayer with one qualifying child (\$30,666 for married filing jointly) to be eligible for a credit of up to \$2,547;
- ▶ less than \$33,692 for a taxpayer with two or more qualifying children (\$34,692 for married filing jointly) to be eligible for a credit of up to \$4,204;
- ▶ less than \$11,230 for a taxpayer with no qualifying children (\$12,230 for married filing jointly) to be eligible for a credit of up to \$382.

It is possible to receive advance payment of next year’s EITC throughout the year, rather than wait and get the credit after your tax return. If you have a qualifying child, you may be able to get some of the EITC in your paycheck. Request Form W-5, “Earned Income Credit Advance Payment Certificate”, from your employer.

Please note that EITC rules and income levels are subject to change each tax year. For more information, see the worksheet in the instructions for the tax form you file, call the nearest IRS office (listed in the yellow pages), or visit [www.irs.gov](http://www.irs.gov)

## ❖ LEGAL SERVICES IN NEW HAMPSHIRE

### FINDING AND HIRING A LAWYER

Before hiring a lawyer, you first must identify your legal problem and then decide what type of legal representation you need. Many lawyers specialize in certain areas of the law, and a lawyer with expertise in one area—for example, divorce—may not be the best choice for another area—for example, criminal proceedings.

A variety of referral programs, listed later in this section, have been established to help individuals find appropriate legal representation. Many of these programs not only provide referrals to lawyers with specific specialties, but also help to determine if other types of assistance may be of benefit to you—for example, a problem that can be addressed, for no charge, by a community or state agency.

#### Selecting a Lawyer

If at all possible, select a lawyer when you are not in crisis and in need of immediate legal representation. In many situations, doing some “comparison shopping” of lawyers will help you to find one with whom you can work comfortably and with full confidence. Some considerations in hiring a lawyer include:

- ▶ Do you and the lawyer have the same goal for the case?
- ▶ Do you believe the lawyer has the expertise and experience to handle your case?
- ▶ Do you understand the lawyer’s explanation of what your case may involve, including a timetable of the case, when and how often the lawyer intends to contact you, and how closely you will be involved in the lawyer’s work?
- ▶ Do you understand and agree with the lawyer’s billing practices?

#### The Consultation

Meeting with a few lawyers to discuss your case may help you decide which lawyer to hire. While some lawyers do not charge for an initial consultation, others do. Be sure to ask the lawyer if there is a fee for this visit and, if so, how much it will be. You can expect the first meeting to be short, usually no longer than a half-hour.

Your consultation will be most productive if you are fully prepared. Present your situation in an organized and concise way, being sure to include dates and times whenever possible. It may be helpful to write this information down, highlighting the most important points. Bring the names, addresses, and telephone numbers of everyone connected with the case, along with important documents related to the situation—photographs, accident reports, police reports, court documents, etc. The goal is to present your situation in such a way that the lawyer can determine quickly if the matter is the type that he or she is willing and able to handle.

You should feel free to ask the lawyer questions during this meeting, including what other cases like yours the lawyer has handled and the outcomes of these cases. Ask if the lawyer will work on your case personally (if not, request a meeting with the lawyer who will handle your case). How long can you expect the case to take, and how can or will you be expected to participate? Finally, be sure to understand fully how and for what services you will be charged.

#### The Fee Agreement

You always should ask for a written **fee agreement** from your lawyer. The fee agreement should explain clearly the legal fees charged by the lawyer, including



what services the lawyer will provide; the type and amount of fees for these services; and the billing practices of the lawyer. See below for some common fee arrangements used by lawyers for legal services.

In addition to legal fees, you will be charged for the costs associated with your case. Costs include fees charged by the courts as well as expenses incurred by the lawyer to prepare and present your case. Typical costs include court filing fees; consultant charges; witness fees; travel expenses related to the case, among others. You can ask, as part of your written fee agreement, for an estimate of expected costs.

Some other issues to consider when writing a fee agreement include:

- ▶ Who else will be working on the case (paralegals, legal assistants, and other support staff), and how will that time be billed?
- ▶ How will costs be paid— directly by you, or by your lawyer for later reimbursement from you?
- ▶ Are there ways to reduce legal fees and costs?
- ▶ How will you be billed and can a payment schedule be arranged?

With a completed fee agreement, you will have a concrete sense of the lawyer's estimate of the total charges. However, remember that an estimate is simply a calculated guess and that the total amount may change as circumstances change.

## Legal Fees

A lawyer's fees can depend on several factors, including the expertise of the lawyer and the complexity of your case. Not all lawyers charge the same fees, although there are a few common fee arrangements.

- ▶ **Fixed fee.** Most often used for routine legal matters, a fixed fee is a standard fee the lawyer may charge all clients—for example, drawing up a simple will. Be sure you know what the fee does and does not include and any other charges that may be added to the bill.
- ▶ **Hourly fee.** Many lawyers charge on an hourly basis. The hourly rate can vary widely from lawyer to lawyer, depending on the lawyer's year of experience, level of expertise, and reputation. If you will be paying hourly fees, ask your lawyer to estimate the amount of time your case will take.
- ▶ **Retainer fee.** Sometimes considered a "down payment" for legal services, legal fees are deducted from the retainer, at the agreed upon hourly rate, until the retainer is used up.
- ▶ **Contingency fee.** When you are suing someone for money (for example, in an accident or personal injury case), a contingency fee agreement means that you will pay your lawyer a percentage of the money you recover. If you lose your case, the lawyer is not paid legal fees. All contingent fee agreements must be in writing, stating what percentage of the money recovered will be paid to the lawyer and whether this percentage is figured before or after costs associated with the case have been paid. Contingency fee percentages of thirty-three (33) percent are common; any percentage in excess of forty (40) percent may be unethical. You should note that, whether or not you win your case, you still have to pay any court costs and expenses related to your case. Also, you should note that, in New Hampshire, lawyers might not charge contingency fees in divorce cases.

- ▶ **Statutory fee.** For certain matters, the court either sets or must approve the fee you will pay.

This information has been adapted with permission from “Selecting, Hiring, and Working With A Lawyer,” published by the Public Information Committee of the New Hampshire Bar Association. To request a copy of the brochure, free of charge, contact the **NEW HAMPSHIRE BAR ASSOCIATION** at **603-224-6942** or visit [www.nhbar.org](http://www.nhbar.org).

## LEGAL INFORMATION & REFERRALS

The agencies listed below provide legal information—not legal advice or representation—for common issues.

- ▶ **LAW LINE OF THE NEW HAMPSHIRE BAR ASSOCIATION (603-224-6942 or 800-868-1212)** is staffed by volunteer lawyers on the second Wednesday of each month between 7:00 and 9:00 p.m.
- ▶ **ADVICE LINE OF THE SENIOR CITIZEN LAW PROJECT (SCLP) (603-624-6000 IN MANCHESTER; 888-353-9944 STATEWIDE)**, operated by **NEW HAMPSHIRE LEGAL ASSISTANCE**, is staffed by attorneys to answer the legal questions of seniors regardless of income.

The following lawyer referral services can help you identify the type of lawyer you need and refer you to appropriate legal representation.

- ▶ **LAWYER REFERRAL SERVICE (LRS) (603-229-0002).** Created by the **NEW HAMPSHIRE BAR ASSOCIATION**, LRS will help you define and narrow your legal problem and refer you to a lawyer in your area who handles your type of case. A referral provides callers with a half-hour consultation with a lawyer for \$25.00, paid at the time of consultation. If a referral to a lawyer is not appropriate, staff may refer you to other service agencies. *Note that LSR is not a legal assistance program and offers no free services.*
- ▶ **IMMIGRATION LAWYER REFERRAL SERVICE (ILRS) (800-954-0254).** Operated by the **AMERICAN IMMIGRATION LAWYERS ASSOCIATION**, this service can help you find an immigration attorney in your area that specializes in your type of case. In addition, the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE (603-647-1500)** can provide referrals to lawyers throughout New Hampshire specializing in immigration law and in the representation of immigrants in the legal system.
- ▶ **ALTERNATE DISPUTE RESOLUTION.** Overseen by the SUPERIOR COURT and FAMILY DIVISION, Alternate Dispute Resolution includes mediators and neutral evaluators to work with parties in resolving disputed issues in civil cases, including divorce and custody. A list of state-certified mediators and neutral evaluators is available in each SUPERIOR COURT or FAMILY DIVISION or at [www.courts.state.nh.us/adrp/index.htm](http://www.courts.state.nh.us/adrp/index.htm).
- ▶ **COLLABORATIVE LAW ALLIANCE OF NEW HAMPSHIRE.** The Alliance maintains a directory of lawyers trained in collaborative law for resolution of civil cases, including divorce and custody. Write P.O. Box 2161, Concord, NH, 03302 or visit [www.collaborativelawnh.org](http://www.collaborativelawnh.org).

## LOW COST & PRO BONO LEGAL SERVICES

### LEGAL ADVICE & REFERRAL CENTER (LARC)

(800) 639-5290 (in-state only)

(603) 224-3333

[www.mv.com/ipusers/larc/index.htm](http://www.mv.com/ipusers/larc/index.htm)

A private, non-profit legal service agency staffed by attorneys and paralegals, LARC assists individuals who meet financial eligibility requirements. Staff provides legal information, legal advice, referrals to other agencies and, in limited cases, direct representation. LARC concentrates on four (4) main areas of law:

- ▶ Family (divorce/separation, unwed custody, child support, guardianship);
- ▶ Public Benefits and Welfare (local welfare, Chapter 8, SSI, SSD, TANF);
- ▶ Housing (landlord/tenant disputes, evictions, and fair housing); and
- ▶ Consumer (debt collection, bankruptcy, consumer protection).

**PROCEDURE.** Intake for new clients is between 9:00 a.m. and 1:00 p.m., Monday, Tuesday, Thursday, and Friday; between 4:00 and 7:00 p.m. on Wednesdays. LARC speaks with approximately one hundred twenty five (125) people every day, so the lines are frequently busy. The phones are answered by an automated system that directs callers to a line for the area of law they need. A receptionist assists in selecting a line for those who do not know which line to select. *Callers with court hearings, or who are in danger, should speak with the receptionist.*

LARC also screens for and refers clients to the Pro Bono Program of the **NEW HAMPSHIRE BAR ASSOCIATION** and special programs of **NEW HAMPSHIRE LEGAL ASSISTANCE** when the case fits that program's criteria or priorities.

### NEW HAMPSHIRE PRO BONO REFERRAL SYSTEM

(800) 639-5290 (in-state only)

(603) 224-3333

A statewide public service program of the **NEW HAMPSHIRE BAR ASSOCIATION**, the Pro Bono Referral Program provides free legal services by volunteer attorneys for civil matters to individuals who cannot afford a lawyer. The Pro Bono Program does not handle traffic violations, criminal cases, or "fee-generating" cases, such as personal injury. Areas of concentration include:

- ▶ Family law and guardianship;
- ▶ Landlord/tenant disputes;
- ▶ Consumer protection, collection defense, and bankruptcies; and
- ▶ Tax abatements.

**PROCEDURE.** Screening for financial eligibility to the Pro Bono Program is handled by the **LEGAL ADVICE & REFERRAL CENTER (LARC)**. Intake for new clients is between 9:00 a.m. and 1:00 p.m., Monday, Tuesday, Thursday, and Friday; between 4:00 and 7:00 p.m. on Wednesdays. Depending on the area of the state, and the complexity of the case, the wait for pro bono help can be as short as one (1) week or as long as six (6) months.

## **NEW HAMPSHIRE LEGAL ASSISTANCE (NHLA)**

(Regional offices listed below)

[www.nhla.org](http://www.nhla.org)

NHLA is a non-profit law firm providing legal advice and representation in civil matters to people who cannot afford to pay for a lawyer. Attorneys and paralegals answer questions from eligible callers on a broad range of legal issues, including:

- ▶ Domestic violence;
- ▶ Housing;
- ▶ Public benefits and assistance; and
- ▶ Disability benefits.

**PROCEDURE.** Intake for new clients is done Mondays, Wednesdays and Fridays from 9:00 a.m. to 12:00 p.m. Written and walk-in applications also are accepted. Calls are screened for problem type and financial eligibility. If NHLA cannot handle your case, you will be referred to other appropriate agencies.

### **CLAREMONT**

408 Moody Building, Tremont Square  
Claremont, NH 03743  
(800) 562-3994 (in-state only)  
(603) 542-8795

### **LITTLETON**

58 Main Street  
Littleton, NH 03561  
(800) 548-1886 (in-state only)  
(603) 444-8000

### **MANCHESTER**

1361 Elm Street, Suite 307  
Manchester, NH 03101  
(800) 562-3174 (in-state only)  
(603) 668-2900

### **PORTSMOUTH**

Simeon Smith House  
412 The Hill, P.O. Box 778  
Portsmouth, NH 03802  
(800) 334-3135 (in-state only)  
(603) 431-7411

**SPECIAL PROJECTS OF NEW HAMPSHIRE LEGAL ASSISTANCE** (please note: most projects have different intake hours and some have different phone numbers than outlined above):

- ▶ **FAIR HOUSING PROJECT** provides legal representation for victims of housing discrimination and conducts educational forums. The Project also helps disabled persons obtain reasonable accommodations for their disabilities and provides referrals to attorneys and agencies, when appropriate. For assistance call Monday through Friday 9:00 a.m. to 5:00 p.m. **800-921-1115** (in-state only) or **603-669-4960** (Manchester).

- ▶ **DOMESTIC VIOLENCE ADVOCACY PROJECT (DVAP)** provides civil legal services for low-income victims of domestic violence, focusing on cases involving custody of children. The Project will assist victims in obtaining restraining orders, custody orders, visitation orders, modifications, child support, and divorces. For assistance call Monday through Friday 9:00 a.m. to 5:00 p.m. **800-562-3174** (in-state only) or **603-668-2900** (Manchester).
- ▶ **HOMELESS ADVOCACY PROJECT** collaborates with homeless service providers across the state, including community action programs and homeless shelters, to provide legal intake, referral, and/or representation in cases involving housing access and retention (public housing evictions, foreclosures, Section 8 denials and terminations; and benefits access (local welfare, SSD, SSDI, TANF, Food Stamps, etc.) Call **800-562-3174** (in-state only) or **603-668-2900** (Manchester).

### **REDUCED FEE REFERRAL PROGRAM OF THE NH BAR ASSOCIATION**

(603) 229-0002  
[www.nhbar.org](http://www.nhbar.org)

Operated as part of the Legal Referral Service of the **NEW HAMPSHIRE BAR ASSOCIATION**, the program is for individuals who need a lawyer but may have trouble paying legal fees. Panel members have agreed to negotiate reduced rates with the client based on the complexity of the case and the financial circumstances of the client. The program does not handle “fee-generating” cases, such as personal injury, and cannot provide referrals when court-appointed counsel is available. *There are no free legal services through the Reduced Fee Referral Program.*

**PROCEDURE.** Referrals are done by phone from 9:00 a.m. to 4:30 p.m., Monday thru Thursday, 9:00 a.m. to 1:00 p.m. on Fridays. The staff will do a brief financial screening by phone, and ask you for information about gross annual income, household size, and liquid assets. If eligible, you will be referred to an attorney based on your legal problem and geographic location. Each case is limited to three (3) referrals. The program does not establish fee schedules. It is up to the client to negotiate a fee with the attorney that is mutually acceptable.

### **CIVIL PRACTICE CLINIC OF FRANKLIN PIERCE LAW CENTER**

(603) 225-3350  
[www.fpla.edu](http://www.fpla.edu)

Primarily serving Merrimack County, students of the Franklin Pierce Law Center provide legal services to low-income clients under the supervision of lawyers and center faculty. Cases handled by the clinic include consumer fraud, foreclosure and debt collection, landlord-tenant disputes, bankruptcy, and issues of small, nonprofit organizations.

### **DISABILITY RIGHTS CENTER (DRC)**

(800) 834-1721  
(603) 228-0432  
[www.drcnh.org](http://www.drcnh.org)

DRC provides representation to individuals with disabilities in legal and administrative matters that arise because of their disabilities. Low-income persons are provided with free legal services; others with higher incomes may be asked to pay for some of the cost. DRC does not charge for brief assistance of less than two (2) hours. For assistance, call **800-834-1721** or **603-228-0432**.

## **SENIOR CITIZEN LAW PROJECT (SCLP)**

(888) 353-9944 (in-state only)

(603) 624-6000 (Manchester)

Operated by **NEW HAMPSHIRE LEGAL ASSISTANCE**, SCLP provides legal counsel, advice, representation, and referral in non-criminal matters to New Hampshire residents who are at least sixty (60) years old. SCLP also operates a toll-free statewide Advice Line. Services are free to seniors regardless of income.

## **OTHER USEFUL SERVICES**

### **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS (RSA 354-B)**

2 Chenell Drive

Concord, NH 03301-8501

(603) 271-2767

[www.state.nh.us/hrc](http://www.state.nh.us/hrc)

This state agency is dedicated to eradicating discrimination based on age, sex, race, religion, color, marital status, familial status, physical or mental disability, national origin, or sexual orientation. The Commission is mandated to investigate complaints about and to enforce statutes relevant to employment discrimination; housing discrimination; interference, coercion, or intimidation; disability discrimination; public accommodations; retaliation; complaint procedures; judicial review and enforcement; and criminal penalties.

### **CASA OF NEW HAMPSHIRE, INC.**

(Regional offices listed below)

[www.casanh.org](http://www.casanh.org)

This non-profit organization is dedicated to assisting abused and neglected children through the New Hampshire child welfare and juvenile court system. For more information, contact a CASA office near you:

Rochester: ..... (603) 332-8350

Berlin: ..... (603) 752-4852

Plymouth: ..... (603) 536-1663

Keene: ..... (603) 358-4012

### **NEW HAMPSHIRE COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE**

(603) 224-8893

[www.nhcadsv.org](http://www.nhcadsv.org)

The New Hampshire Coalition Against Domestic and Sexual Violence is the umbrella organization of the fourteen (14) crisis center programs throughout the state established to provide services to victims and survivors of sexual assault and domestic violence. Services through the centers are provided free of charge and are available twenty-four (24) hours a day, seven (7) days a week to all people regardless of age, race, gender, sexual orientation, national origin, religious or political beliefs, physical or mental ability, or immigration status. Crisis center services include:

- ▶ Twenty-four (24) hour crisis lines;
- ▶ Emergency shelter;
- ▶ Emergency transportation;
- ▶ Legal and court advocacy;
- ▶ Hospital advocacy; and
- ▶ Information and assistance in getting public assistance.

Individuals do not have to be in crisis to obtain services. A full listing of New Hampshire centers can be found on the inside back cover of this Handbook.

### **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE (IINH)**

(603) 647-1500

[www.iiboston.org/iinh.html](http://www.iiboston.org/iinh.html)

IINH offers comprehensive resettlement services to refugees and immigrants in New Hampshire, including English-as-a-second-language instruction; citizenship classes; employment and training opportunities; information about health and social services; and community orientation and outreach. Legal services focus on immigration and refugee issues.

### **PARENT INFORMATION CENTER**

(603) 224-7005 V/TDD

(800) 947-7005 (in-state only)

[www.parentinformationcenter.org](http://www.parentinformationcenter.org)

The Parent Information Center provides referral, support, resources, workshops and training to parents of children with disabilities. Their mission includes increasing quality of life; promoting community awareness; and promoting parent/professional collaboration.

### **NEW HAMPSHIRE CATHOLIC CHARITIES**

(603) 669-3030

[www.catholiccharitiesnh.org](http://www.catholiccharitiesnh.org)

One of the state's largest non-profit social service agencies, New Hampshire Catholic Charities provides counseling, parenting classes, support groups, temporary or permanent homes for children and the elderly, job training, immigration assistance, sign language classes, maternity and adoption services as well as referrals and connections to other service agencies.

### **NEW HAMPSHIRE HELPLINE**

(800) 852-3388

[www.nhhelpline.org](http://www.nhhelpline.org)

NH Helpline offers free information and referrals statewide for all human service needs.

### **SERVICELINK**

(866)-634-9412

[www.state.nh.us/servicelink/index.html](http://www.state.nh.us/servicelink/index.html)

ServiceLink provides information and referrals to a network of community-based services for the elderly and their families.

## **NEW HAMPSHIRE DOMESTIC VIOLENCE HOTLINE**

(866) 644-3574

(800) 735-2964 (TDD/VOICE)

Offers assistance twenty-four (24) hours a day, three hundred sixty five (365) days a year. Services include twenty-four (24) hour crisis lines, emergency shelters, transportation to emergency shelters, and court advocacy.

## **NEW HAMPSHIRE SEXUAL ASSAULT HOTLINE**

(800) 277-5570

(800) 735-2964 (TDD/VOICE)

Offers assistance twenty-four (24) hours a day, three hundred sixty five (365) days a year. Services include twenty-four (24) hour crisis lines, accompaniment to hospital emergency rooms, and court advocacy.

## **CHILD AND FAMILY SERVICES**

(603) 668-1920

(800) 640-6486

[www.cfsnh.org](http://www.cfsnh.org)

Child and Family Services is an independent nonprofit agency dedicated to advancing the well-being of children by providing an array of social services to strengthen family life and by promoting community commitment to the needs of children.



## ❖ STATE & FEDERAL AGENCIES

### NEW HAMPSHIRE DEPARTMENT OF HEALTH & HUMAN SERVICES

[www.dhhs.state.nh.us/](http://www.dhhs.state.nh.us/)

Ombudsman (800) 852-3345

Long Term Care Ombudsman (800) 442-5460

#### **DIVISION OF CHILDREN, YOUTH AND FAMILIES**

Includes juvenile justice services and reporting of child abuse and neglect.

**(800) 894-5533 OR (603) 271-6556**

#### **DIVISION OF CHILD SUPPORT SERVICES**

129 Pleasant Street

Concord, NH 03301-3857

**(800) 852-3345, ext. 4427 OR**

**(603) 271-4427**

#### **OFFICE OF COMMUNITY & PUBLIC HEALTH**

Oversees WIC program, providing food vouchers to pregnant women, new mothers, and children up to age five.

**(800) WIC-4321**

#### **NEW HAMPSHIRE HEALTHY KIDS**

Free and low-cost health insurance for uninsured children.

**(877) 464-2447**

#### **DIVISION OF DEVELOPMENTAL SERVICES**

Promotes opportunities for normal life experiences for persons with developmental disabilities and acquired brain disorders.

**(800) 852-3345**

#### **BUREAU OF RURAL HEALTH AND PRIMARY CARE**

Provides assistance in locating the Primary Care Community Health Center in your area for comprehensive preventative and primary care services regardless of the patient's ability to pay.

**(800) 852-3345 x4547**

#### **DIVISION OF BEHAVIORAL HEALTH**

Provides assistance for locating acute psychiatric care, community mental health services, and peer supports funded through the Division.

**(800) 852-3345**

#### **DIVISION OF ALCOHOL AND DRUG ABUSE PREVENTION AND RECOVERY**

Provides information and referrals on prevention, intervention, and treatment for all kinds of substance abuse situations.

**(800) 852-3345**

#### **DIVISION OF FAMILY ASSISTANCE**

Oversees eligibility enrollment for child care subsidies, the food stamp program, Medicaid (including coverage for elders, the disabled or blind, and pregnant women), Temporary Assistance to Needy Families (including cash assistance), and the New Hampshire Employment Program (including barrier resolution and skill building programs for TANF clients). Contact the number below for the nearest District office.

**(800) 852-3345**

#### **DIVISION OF ELDERLY AND ADULT SERVICES**

Offers long term care services to the elderly, chronically ill, and disabled adults. Also oversees ServiceLink NH, a network of community-based resources and referrals. Call ServiceLink NH at the number below for the nearest District office.

**(866) 634-9412**

#### **STATE SUPPLEMENTAL ASSISTANCE PROGRAMS**

Provide financial assistance to those in need who are 65 years or older (OAA), physically or mentally disabled between the ages of 18 and 64 (APTD), or blind (ANB). Contact the number below for the nearest District office.

**(800) 852-3345**

#### **FUEL ASSISTANCE**

**(603) 271-8317**

#### **PUBLIC & SUBSIDIZED HOUSING**

**(603) 472-8623**

## **STATE OF NEW HAMPSHIRE, JUDICIAL BRANCH**

[www.courts.state.nh.us](http://www.courts.state.nh.us)

### **COURT PUBLIC INFORMATION OFFICE**

One Noble Drive  
Concord, NH 03301  
**(603) 271-2646, ext. 359**

### **NEW HAMPSHIRE LAW LIBRARY**

One Nobel Drive  
Concord, NH 03301  
**(603) 271-3777**

### **MARITAL MEDIATION CERTIFICATION BOARD**

25 Capitol Street, Room 422  
Concord, NH 03301-6312  
**(603) 271-6593**

## **NEW HAMPSHIRE COMMISSION ON THE STATUS OF WOMEN**

[www.state.nh.us/csw](http://www.state.nh.us/csw)

25 Capitol Street, Room 414  
Concord, NH 03301-6312  
**(603) 271-2660**

## **NEW HAMPSHIRE DEPARTMENT OF EDUCATION**

[www.state.nh.us/doe/education.html](http://www.state.nh.us/doe/education.html)

101 Pleasant Street  
Concord, NH 03301-3860  
(603) 271-3494

**Citizens' Services Line: 1-800-339-9900**

## **NEW HAMPSHIRE DEPARTMENT OF JUSTICE**

<http://www.state.nh.us/nhdoj>

### **NEW HAMPSHIRE ATTORNEY**

#### **GENERAL'S OFFICE**

33 Capitol Street  
Concord, NH 03301  
**(603) 271-3658**

### **VICTIM'S ASSISTANCE COMMISSION**

33 Capitol Street  
Concord, NH 03301  
**(800) 300-4500**  
**(603) 271-1284**

## **NEW HAMPSHIRE DEPARTMENT OF LABOR**

[www.state.nh.us/dol](http://www.state.nh.us/dol)

### **WAGE AND HOURS DIVISION**

95 Pleasant Street  
Concord NH 03301-3836  
**(603) 271-1492**

## **NEW HAMPSHIRE DEPARTMENT OF SAFETY**

[www.state.nh.us/safety](http://www.state.nh.us/safety)

### **STATE FIRE MARSHAL**

10 Hazen Drive  
Concord, NH 03301  
**(603) 271-3294**

**UNITED STATES DEPARTMENT OF EDUCATION**

[www.ed.gov](http://www.ed.gov)

**OFFICE FOR CIVIL RIGHTS**

Mary E. Switzer Building

330 C Street, SW

Washington, DC 20202

**(800) 421-3481**

**UNITED STATES DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[www.hud.gov](http://www.hud.gov)

451 7<sup>th</sup> Street, SW

Washington, DC 20410

**(202) 708-1112**

**UNITED STATES DEPARTMENT OF JUSTICE**

[www.usdoj.gov](http://www.usdoj.gov)

**OFFICE OF SPECIAL COUNSEL FOR  
IMMIGRATION-RELATED UNFAIR  
EMPLOYMENT PRACTICES**

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

**(202) 616-5594**

**OFFICE OF SPECIAL COUNSEL**

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

**(800) 255-7688**

**UNITED STATES DEPARTMENT OF STATE**

[www.state.gov](http://www.state.gov)

**OFFICE OF CHILDREN'S ISSUES**

2201 C Street, NW

SA - 22, Room 2100

Washington, DC 20520-4818

**(202) 736-7000**

**UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

[www.eeoc.gov](http://www.eeoc.gov)

JFK Federal Building

Room 475

Government Center

Boston, MA 02203

**(800) 669-4000**

**(617) 565-3200**

**NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN**

[www.missingkids.org](http://www.missingkids.org)

Charles B. Wang International Children's Building

699 Prince Street

Alexandra, VA 22314-3175

**(703) 274-3900**

## ❖ NEW HAMPSHIRE COURTS

### SUPERIOR COURTS

[www.courts.state.nh.us/superior](http://www.courts.state.nh.us/superior)

#### **BELKNAP COUNTY SUPERIOR COURT**

64 Court Street  
Suite 5  
Laconia, NH 03246-3682  
**(603) 524-3570**

#### **CARROLL COUNTY SUPERIOR COURT**

Carroll County Courthouse  
Courthouse Square  
Rt. 171  
P.O. Box 433  
Ossipee, NH 03864-0433  
**(603) 539-2201**

#### **CHESHIRE COUNTY SUPERIOR COURT**

12 Court Street  
P.O. Box 444  
Keene, NH 03431-0444  
**(603) 352-6902**

#### **COOS COUNTY SUPERIOR COURT**

55 School Street, Suite 301  
Lancaster, NH 03584  
**(603) 788-4900**

#### **GRAFTON COUNTY SUPERIOR COURT**

3785 Dartmouth College Highway  
RR1, Box 65  
North Haverhill, NH 03774  
**(603) 787-6961**

#### **HILLSBOROUGH COUNTY SUPERIOR COURT**

Northern District  
300 Chestnut Street  
Manchester, NH 03101-2490  
**(603) 669-7410**

#### **HILLSBOROUGH COUNTY SUPERIOR COURT**

Southern District  
30 Spring Street  
P.O. Box 2072  
Nashua, NH 03061-2072  
**(603) 883-6461**

#### **MERRIMACK COUNTY SUPERIOR COURT**

163 N. Main Street  
P.O. Box 2880  
Concord, NH 03302-2880  
**(603) 225-5501**

#### **ROCKINGHAM COUNTY SUPERIOR COURT**

10 Rt. 125  
Brentwood, NH 03833  
Mailing Address  
P.O. Box 1258  
Kingston, NH 03848-1258  
**(603) 642-5256**

#### **STRAFFORD COUNTY SUPERIOR COURT**

279 County Farm Road  
P.O. Box 799  
Dover, NH 03820-0799  
**(603) 742-3065**

#### **SULLIVAN COUNTY SUPERIOR COURT**

22 Main Street  
Newport, NH 03773  
**(603) 863-3450**

### DISTRICT COURTS

[www.courts.state.nh.us/district](http://www.courts.state.nh.us/district)

#### **AUBURN DISTRICT COURT**

5 Priscilla Lane  
Auburn, NH 03032  
**(603) 624-2084**  
**(603) 624-2265**

#### **BERLIN DISTRICT COURT**

220 Main Street  
Berlin, NH 03570  
**(603) 752-3160**

#### **DISTRICT COURT FOR SOUTHERN CARROLL COUNTY**

East Conway Road, Route 302  
North Conway, NH 03860  
P.O. Box 940  
Conway, NH 03818-0940  
**(603) 356-7710**

**CLAREMONT DISTRICT COURT**

District Court Building  
Police Court  
P.O. Box 313  
Claremont, NH 03743  
**(603) 542-6064**

**COLEBROOK DISTRICT COURT**

10 Bridge Street  
P.O. Box 5  
Colebrook, NH 03576  
**(603) 237-4229**

**CONCORD DISTRICT COURT**

32 Clinton Street  
P.O. Box 3420  
Concord, NH 03302-3420  
**(603) 271-6400**

**DERRY DISTRICT COURT**

10 Manning Street  
Derry, NH 03038  
**(603) 434-4676**  
**(603) 434-4677**

**DOVER DISTRICT COURT**

25 Saint Thomas Street  
Dover, NH 03820  
**(603) 742-7202**  
**(603) 749-4612**

**DURHAM DISTRICT COURT**

Main Street  
Durham, NH 03824  
**(603) 868-2323**

**EXETER DISTRICT COURT**

120 Water Street  
P.O. Box 394  
Exeter, NH 03833  
**(603) 772-2931**

**FRANKLIN DISTRICT COURT**

7 Hancock Terrace  
P.O. Box 172  
Franklin, NH 03235-0172  
**(603) 934-3290**

**GOFFSTOWN DISTRICT COURT**

Town Hall  
16 Main Street  
P.O. Box 129  
Goffstown, NH 03045-0129  
**(603) 497-2597**

**GORHAM DISTRICT COURT**

Municipal Building  
20 Park Street  
P.O. Box 176  
Gorham, NH 03581  
**(603) 466-2454**

**HAMPTON DISTRICT COURT**

132 Winnacunnet Road  
P.O. Box 10  
Hampton, NH 03843-0010  
**(603) 926-8117**

**HAVERHILL DISTRICT COURT**

3785 Dartmouth College Highway Box 10  
North Haverhill, NH 03774  
**(603) 787-6626**

**HENNIKER DISTRICT COURT**

2 Depot Street  
Henniker, NH 03242  
**(603) 428-3214**

**HILLSBOROUGH DISTRICT COURT**

Community Building  
27 School Street  
P.O. Box 763  
Hillsboro, NH 03244-0763  
**(603) 464-5811**

**HOOKSETT DISTRICT COURT**

101 Merrimack Street  
Hooksett, NH 03106-1416  
**(603) 485-9901**  
**(603) 485-9220**

**JAFFREY/PETERBOROUGH DISTRICT COURT**

7 Knight Street  
P.O. Box 39  
Jaffrey, NH 03452-0039  
**(603) 532-8698**  
**(603) 532-7276**

**KEENE DISTRICT COURT**

3 Washington Street  
P.O. Box 364  
Keene, NH 03431-0364  
**(603) 352-2559**  
**(603) 352-2047**

**LACONIA DISTRICT COURT**

26 Academy Square  
P.O. Box 1010  
Laconia, NH 03247-1010  
**(603) 524-4128**  
**(603) 524-4051**

**LANCASTER DISTRICT COURT**

55 School Street  
Suite 201  
Lancaster, NH 03584  
**(603) 788-4485**

**LEBANON DISTRICT COURT**

38 Centerra Parkway  
Lebanon, NH 03766-0247  
**(603) 448-1297**

**LITTLETON DISTRICT COURT**

134 Main Street  
Littleton, NH 03561  
**(603) 444-7750**

**MANCHESTER DISTRICT COURT**

35 Amherst Street  
P.O. Box 456  
Manchester, NH 03105-0456  
**(603) 624-6510**

**MERRIMACK DISTRICT COURT**

Town Hall Building  
Baboosic Lake Road  
P.O. Box 324  
Merrimack, NH 03054  
**(603) 424-9916**  
**(603) 424-9917**  
**(603) 424-7005**

**MILFORD DISTRICT COURT**

Meeting Place Mall  
P.O. Box 148  
Amherst, NH 03431-0148  
**(603) 673-2900**

**NASHUA DISTRICT COURT**

25 Walnut Street  
Nashua, NH 03060  
**(603) 880-3333**  
**(603) 880-3336**

**NEW LONDON DISTRICT COURT**

120 Main Street  
P.O. Box 1966  
New London, NH 03257  
**(603) 526-6519**

**NEWPORT DISTRICT COURT**

Courthouse Square  
P.O. Box 581  
Newport, NH 03773  
**(603) 863-1832**

**PLAISTOW DISTRICT COURT**

Town Hall  
14 Elm Street  
P.O. Box 129  
Plaistow, NH 03865  
**(603) 382-4651**

**PLYMOUTH DISTRICT COURT**

26 Green Street  
Plymouth, NH 03264  
**(603) 536-3326**

**PORTSMOUTH DISTRICT COURT**

III Parrott Avenue  
Portsmouth, NH 03801-4490  
**(603) 431-2192**

**ROCHESTER DISTRICT COURT**

76 North Main Street  
Rochester, NH 03867-1905  
**(603) 332-3516**  
**(603) 332-3150**

**SALEM DISTRICT COURT**

35 Geremonty Drive  
Salem, NH 03079  
**(603) 893-4483**

**SOMERSWORTH DISTRICT COURT**

2 Pleasant Street  
Somersworth, NH 03878-2543  
**(603) 692-5967**

**DISTRICT COURT FOR SOUTHERN  
CARROLL COUNTY**

Rt. 171  
Courthouse Square  
P.O. Box 421  
Ossipee, NH 03864-0421  
**(603) 539-4561**

## **FAMILY DIVISION**

[www.courts.state.nh.us/fdpp/index.htm](http://www.courts.state.nh.us/fdpp/index.htm)

A pilot project since 1996, the Family Division serves Rockingham and Grafton Counties for judicial resolution to such family matters as divorce, child custody and visitation, child support, legal separation, paternity, domestic violence, juvenile delinquency, child abuse and neglect, and other child-related issues.

### **GRAFTON COUNTY**

#### **FAMILY DIVISION AT HAVERHILL**

RR1 Box 65G  
N. Haverhill, NH 03774  
**(603) 787-6820**

#### **FAMILY DIVISION AT LEBANON**

38 Centerra Parkway  
Lebanon, NH 03766  
**(603) 643-3666**  
**(603) 643-1469**

#### **FAMILY DIVISION AT LITTLETON**

134 Main Street  
Littleton, NH 03561  
**(603) 444-3187**

#### **FAMILY DIVISION AT PLYMOUTH**

26 Green Street  
Plymouth, NH 03264  
**(603) 536-7609**  
**(603) 536-7280**

### **ROCKINGHAM COUNTY**

#### **FAMILY DIVISION AT BRENTWOOD**

(Mailing Address)  
P.O. Box 1208  
Kingston, NH 03848-9998  
  
(Courthouse Address)  
10 Route 125  
Brentwood, NH 03833  
**(603) 642-6314**  
**(603) 642-6371**

#### **FAMILY DIVISION AT DERRY**

10 Manning Street  
Derry, NH 03038  
**(603) 421-0077**  
**(603) 421-0088**

#### **FAMILY DIVISION AT PORTSMOUTH**

111 Parrott Avenue  
Portsmouth, NH 03801  
**(603) 433-8518**  
**(603) 436-5039**

#### **FAMILY DIVISION AT SALEM**

35 Geremonty Drive  
Salem, NH 03079  
**(603) 893-2084**  
**(603) 893-2486**

## **NEW HAMPSHIRE PUBLIC DEFENDERS**

New Hampshire Public Defender is a private, non-profit corporation providing legal representation to indigent individuals charged with homicides, felonies, misdemeanors, and juvenile delinquency. A Public Defender is appointed by the courts to represent individuals in need of counsel who cannot afford to pay.

### **NH PUBLIC DEFENDER OF CONCORD**

117 North State Street  
Concord, NH 03301  
**(603) 224-1236**

### **NH PUBLIC DEFENDER OF DOVER**

50 Chestnut Street  
Dover, NH 03820  
**(603) 749-5540**

### **NH PUBLIC DEFENDER OF KEENE**

One West Street  
Keene, NH 03431  
**(603) 357-4891**

### **NH PUBLIC DEFENDER OF LACONIA**

174 Court Street, Suite 1  
Laconia, NH 03246  
**(603) 524-1831**

### **NH PUBLIC DEFENDER OF LITTLETON**

134 Main Street  
Littleton, NH 03561  
**(603) 444-1185**

### **NH PUBLIC DEFENDER OF MANCHESTER**

20 Merrimack Street  
Manchester, NH 03101  
**(603) 669-7888**

### **NH PUBLIC DEFENDER OF NASHUA**

188 Main Street  
Nashua, NH 03060  
**(603) 598-4986**

### **NH PUBLIC DEFENDER OF ORFORD**

Route 10, RR #1, Box 42A  
Orford, NH 03777  
**(603) 353-4440**

### **NH PUBLIC DEFENDER OF STRATHAM**

142 Portsmouth Avenue  
Stratham, NH 03885  
**(603) 772-7701**

### **APPELLATE DEFENDER PROGRAM**

Franklin Pierce Law Center  
2 White Street  
Concord, NH 03301  
**(603) 228-9218**



## ❖ GLOSSARY OF TERMS

**540-A Petition** – a petition to be filed if your landlord is doing something illegal and you want him or her to stop.

**Adjusted Gross Income (RSA 458-C)** – The basis for determining New Hampshire child support guidelines.

**Affidavit** – a written declaration upon oath made before an authorized official.

**Aggravated Felonious Sexual Assault (RSA 632-A:2)** – sexual penetration, however slight, into any opening (vagina, mouth or anus) against a person's will (without consent).

**Alimony (RSA 458:19)** – payment of financial support from one spouse to another.

**Annulment (RSA 458:1)** – a court process establishing that a marriage never legally existed. This differs from a divorce in that a divorce terminates a legal marriage.

**Appeal** – A written request to a higher court to modify or reverse the judgment of a trial court or intermediate level appellate court.

**Appearance** – granted by filing an appearance form with the District Court to obtain a hearing to challenge an eviction before the return date.

**Arraignment** – procedure when the accused is brought before the court to plead to a criminal charge. He or she may plead guilty or not guilty.

**Asylee** – a person physically present in the United States who is unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. (e.g. a person who obtains their refugee status in the United States).

**Bail Conditions** – rules that a person who has been released on bail must follow. If these conditions are not met, bail will be revoked.

**Bail Order** – an order directed to a person who has been placed under arrest for a crime, requiring him or her to pay a monetary amount to ensure he or she appears in court.

**Bona Fide Occupational Qualification (BFOQ)** – necessary requirement for employment.

**Child Abuse** – the physical, emotional, or sexual mistreatment of children.

**Child Support** – The entitlement of all children to be supported by their parents until the children reach the age of majority or become emancipated – usually by marriage, by entry into the armed forces or by living independently.

**Child Support Guidelines** – guidelines used by the court to determine the amount of child support the non-custodial parent should pay to the custodial parent.

**Civil Annulment** – see **Annulment**.

**Class B Felony** – a crime punishable with three and a half (3.5) to seven (7) years in state prison.

**Closed Session** – a hearing which no one is allowed to attend except for the grand jury. The grand jury hears the evidence presented by the County Attorney's office against the defendant. The defendant is usually not present.

**COBRA Law (NH equivalent law: RSA 415:18 VII)** – a federal law which requires companies to allow former employees to remain on the company's insurance for up to 18 months, until they find a new job, during which time the employee pays 100% of the insurance premium. In case of a Social Security designated disability, coverage may be extended to 29 months.

**Common-Law Marriage (RSA 457:39)** – a relationship in which a couple lives together as though they are married, without having gone through a legal ceremony.

**Compensation (RSA 21-M:8-h)** – financial reimbursement for any damages and suffering that a victim may have received as a result of abuse. This can be sought through civil action against the abuser.

**Contempt** – when a court order is willfully and knowingly violated.

**Contested Divorce** – a divorce where the parties are unable or unwilling to come to a mutual agreement.

**County Attorney** – an attorney employed by the county who prosecutes felony cases in the Superior Court.

**Course of Conduct** – two or more acts over a period of time, however short, which show a continuity of purpose.

**Crime Against the State** – once a crime has been reported to the police and an arrest has been made, the decision of whether the case continues in the court system, is up to the police and prosecutor.

**Crisis Center** – a program established to provide free 24-hour confidential (RSA 173-C), emergency support and assistance, 7 days a week, to victims of domestic violence, stalking, sexual assault, and sexual harassment regardless of age, race, gender, sexual orientation, economic status, physical or cognitive ability, and political or philosophical beliefs. Reports of child abuse are never confidential and crisis centers and advocates are required by law to report them.

**Crisis Center Advocate (RSA 173-C)** – an individual from a crisis center who works with victims and survivors of domestic abuse, sexual violence, stalking and sexual harassment providing confidential (with the exception of reports of child abuse), emotional support and assistance with legal, social service and medical issues.

**Custodial Parent** – parent with whom the children live.

**Custody** – the legal authority to make decisions affecting a child's interests (legal custody) and the responsibility of taking care of the child (physical custody).

**Defendant** – the person who is accused of a crime.

**Demand for Rent** – the first notice in the eviction process which must be given personally and cannot ask for more rent than actually owed.

**Department of Justice** – headed by the Attorney General, the Department of Justice acts as the chief law enforcement officer and prosecutor for the state of New Hampshire.

**Disposition** – final settlement or sentencing of a criminal case.

**Discovery** – process by which a party is granted the right, by the court, to have access to information needed for a court case, including access to income and assets information in divorces and other support cases, including evictions.

**Discretionary Stay** – a stay of up to ninety (90) days granted by the court in the case of a lost hearing during which the writ of possession is delayed.

**Discrimination** – choosing or denying people on the basis of prejudice or preference.

**District Court** – a state court of general jurisdiction.

**Divorce** – the legal termination of marriage.

**Documented Immigrant** – can include, but are not limited to, lawful permanent residents, temporary residents under the IRCA amnesty program, in status aliens, refugees, asylees, persons granted cancellation of removal (formerly withholding of deportation) or paroled for at least one year; Cuban and Haitian entrants; and battered spouses and children with a pending or approved spousal visa; or petition for relief under the Violence Against Woman Act.

**Domestic Violence** – violence toward or physical abuse of one's spouse or domestic partner.

**Domestic Violence Petition** – this form serves as your application for a protective order; after obtaining one from the courthouse clerk, completing and returning it, it will be reviewed by a judge.

**Domestic Violence Protective Order** – an order, placed by the courts, available to someone who has been subject to actual or threatened physical violence by a family or household member, or a current or former intimate or sexual partner.

**DOVE Project** – free legal representation for final protective order hearings under (RSA 173-B) accessed through domestic violence and sexual assault crisis centers.

**Emergency Protective Order** – a protective order that can be obtained when the courts are closed. The process can be completed by contacting local or state police. They will fill out the necessary paperwork and contact a judge via telephone.

**Equality Wheel** – an illustration of the concepts of equality and non-violent behaviors and interactions in a relationship.

**Equitable Powers** – the power by the Supreme Court to make fair orders.

**Equitably** – fairly.

**Evaluator** – a neutral person who attempts to settle a divorce between two people through mediation.

**Ex Parte** – a party can request emergency assistance of the courts under circumstances where it is not possible or advisable to notify the other party before the court considers the request. A hearing where both parties can be present is scheduled very quickly thereafter.

**Family Division Court (RSA 152)** – a pilot project in Rockingham and Grafton Counties in which families are assigned to one Family division judge or marital master. These judges have been specially trained to find prompt and fair resolutions to family issues. The Family Division was granted jurisdiction over the city or towns formerly covered by the District Courts in these counties.

**Fault Grounds (RSA 458:7)** – When a spouse claims in a divorce proceeding that he/she has been a good and faithful spouse and the other party has committed one of approximately nine different faults that caused the breakdown of the marriage.

**Fee Agreement** – a document to request from your lawyer which explains the legal fees you will be charged with.

**Felonious Sexual Assault (RSA-632-A:3)** – often referred to as the “statutory rape law” involving relations with someone between the ages of 13 and 16. The legal age of consent in New Hampshire is 16. Felonious Sexual Assault also includes sexual contact which causes serious bodily injury and sexual contact with a person under 13 years of age.

**Felony** – a criminal offense punishable by more than one year in jail and/or a monetary fine of more than \$2,000.

**Final Stipulation** – see “Stipulation.”

**Good Cause** – a custodial parent receiving public assistance or Medicaid can claim good cause not to have child support established if the parent can verify that cooperating with the Office of Child Support is not in the best interest of the child (for example, if there is risk of physical or emotional harm to the parent or child).

**Grand Jury** – a group of 12-23 citizens whose duty it is to hear the evidence and accusations that have been made against the defendant, and decide whether there is enough evidence to bring the case to trial.

**Guardian Ad Litem** – someone appointed by the court to represent minor children in a contested divorce. The “GAL” investigates and makes recommendations to the court on child custody issues.

**Hostile Working Environment (RSA 354-A)** – work site where victim is subject to repeated unwelcome sexual comments, innuendoes, and touching which alter conditions or interfere with school or work performance, as well as access to opportunities the institution provides.

**Hung Jury** – a jury unable to make a unanimous decision in a trial.

**Immigrant** – a person from another country who has entered the United States. Immigrants can be documented or undocumented. **Documented immigrants** can include, but are not limited to, lawful permanent residents, temporary residents under the IRCA amnesty program, in status aliens, refugees, asylees, persons granted cancellation of removal (formerly withholding of deportation) or paroled for at least one year; Cuban and Haitian entrants; and battered spouses and children with a pending or approved (a) spousal visa, or (b) petition for relief under the Violence Against Women Act (further explained in the domestic violence section of this Handbook). An **undocumented immigrant** is a person who has entered the U.S. without inspection or has entered lawfully and has overstayed his/her visa.

**Impound** – to take into legal custody.

**Incest** – sexual relations between persons so closely related that they are forbidden by law or religion to marry.

**Income Assignment** – when a designated amount of pay is withheld automatically from the paycheck of the person paying support and sent directly to the other parent.

**Indictment** – a formal charge against the defendant, if a Grand Jury believes a crime has been committed.

**Interference of Custody** – the act of relocating, without court permission, with your children before the divorce is final.

**International Child Abduction** – the violation of a custody order by taking the children to a different country.

**Joint Legal Custody** – a custodial decision where both parents are granted the same rights in making medical and educational decisions for their children, have access to the children’s records and are fully involved in the children’s upbringing.

**Joint Petition** – filed by both parties, this petition eliminates the need for serving divorce papers through a sheriff.

**Jurisdiction** – the cities or towns over which a court has power to hear cases.

**Legal Separation (RSA 458:26)** – a court order arranging the terms (custody, support, etc.) under which a married couple will live separately. This addresses the same issues as divorce, but does not completely dissolve the marriage.

**Marriage License** – A document that authorizes a couple to get married, usually available from the county clerk’s office in the state where the marriage will take place.

**Marital Estate** – all of the belongings of a married couple, including assets (e.g., property, automobiles, household goods, etc.) and debts.

**Marital Master** – a judge-like official who hears matters of domestic related cases that do not involve a criminal case in which the defendant could receive jail time.

**Mediation** – a non-adversarial process in which a neutral third party acts to encourage and help disputing parties reach a mutually acceptable agreement. May not be a good option when domestic violence is present.

**Misdemeanor** – a criminal offense punishable by a monetary fine, under \$2,000 and/or a jail sentence of one year or less.

**No Contact** – may be included in bail conditions which state that the accused is prohibited from contacting you or your family.

**No-Fault Grounds (RSA 458:7-a)** – a divorce in which irreconcilable differences are cited as the cause for the ending of the marriage.

**Non-Custodial Parent** – a parent who has been awarded visitation by the courts.

**Notice of Intent to Appeal** – allows a person to appeal an eviction ruling to the New Hampshire Supreme Court if filed with the district court within seven (7) days of the court's decision.

**Notice to Quit** – a written eviction notice that must be served personally and state the specific reason for eviction.

**Orders of Notice** – notice ordered by the court requiring the party who filed for divorce to ensure that the other party is served by a sheriff with copies of the "Petition for Divorce".

**Parole** – the conditional release of a person from prison prior to the end of the sentence imposed.

**Paternity (RSA 168-A:2)** – the relationship of a father.

**Permanent Stipulation** – a final agreement settling a divorce dispute.

**Personalized Safety Plan** – A paper with the numbers of your local crisis center, contact persons, places where you (and your children) can go in the case of an emergency, and suggestions to help you insure your personal safety.

**Petition for Divorce (RSA 458:9)** – a document stating the basic history of a marriage, the reason for divorce, and the requests being made of the court.

**Petitioner** – the person who initiates a lawsuit.

**Plaintiff** – a person who begins a court action.

**Plea Bargaining** – the process where the accused in a case and the prosecuting attorney work out a mutually satisfactory agreement, which then goes before the court for approval.

**Power and Control Wheel** – a wheel diagram which describes aspects of abusive behaviors related to power and control issues.

**Pre-Sentence Investigation** – an investigation of the defendant's past behavior done by a probation officer for the benefit of the court. This information is used in considering the terms of the defendant's sentence.

**Primary Physical Custody** – a custody arrangement where the children live predominantly with one parent.

**Pro Bono** – free legal representation.

**Pro Se** – representing oneself in a court action or procedure.

**Probable Cause Hearing** – a hearing in which it is determined whether or not there is enough evidence to go forth with a criminal trial.

**Probation** – the conditional release of an offender under the supervision of a probation officer.

**Property Division** – the division of mutual property between two people after a divorce.

**Protective Order** – see **Domestic Violence Protective Order**.

**Qualified Domestic Relations Order (QDRO)** – A court order that is prepared by your attorney that may entitle you to receive a share of your ex-spouse's pension or retirement plan. The QDRO will be decided on at the final divorce hearing.

**Rape Drug (Drug-Induced Rape Prevention Act of 1996)** – a drug, such as GHB or Rohypnol, which is used to render someone helpless or unconscious for the purpose of committing a sexual assault.

**Reduced Fee Referral Program** – a legal service which provides statewide referrals to qualified individuals who can afford to pay something for an attorney's services, but who cannot afford an attorney's regular fees.

**Refugee** – a person outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

**Residual Physical Custodial Rights** – a custody agreement when one parent is awarded visitation by a pre-arranged schedule worked out between the parents or the courts.

**Respondent** – the defendant who is being sued and must respond to the petitioner's complaint.

**Restraining Order** – An order from a court directing one person not to do something, such as make contact with another person, enter the family home or remove a child from the state.

**Retaliation** – the illegal firing or punishing of an employee who makes or files a complaint in good faith.

**Return Date** – found on the writ delivered by law enforcement, an appearance must be filed before this date in order to challenge the eviction.

**Revised Statute Annotated** – Abbreviated as RSA, these are the complete compilations of New Hampshire's statute law.

**Right to Cure** – the ability to avoid eviction if back rent plus \$15 is paid by the date the notice to quit expires.

**SANE** – sexual assault nurse examiner.

**SCOPE** – a bi-monthly workshop offered by Superior Courts to provide answers to legal processes and procedures related to divorce, child custody and child support.

**Sentence** – punishment in a criminal case.

**Sentencing Hearing** – a hearing to reveal the sentence of the accused in a criminal case.

**Sequester** – to set apart.

**Sexual Assault (RSA-632-A:4)** – formerly known as "rape," is sexual contact with a person 13 years or older, against his/her will or without consent. It is punishable by up to one year in the House of Corrections.

**Sexual Assault Medical Exam** – a physical, gynecological exam performed to make sure the victim of a sexual assault is not physically hurt, and to collect evidence of a sexual assault.

**Sexual Harassment** – unwelcome sexual advances or conduct that create an intimidating, hostile or offensive environment.

**Shared Physical Custody** – custody agreement where the children spend half of their time living with one parent and half with the other.

**Sole Legal Custody (RSA 458-17)** – custody arrangement where one parent has all the decision making power for the child.

**Stalking (RSA 633:3-a)** – is behavior involving a course of conduct by a person that places another person in fear of his or her safety.

**Stalking Protective Order** – an order available from the court to someone who is being stalked.

**Statute of Limitations** – a declaration that no case will be brought forward after a certain amount of time (statutes vary depending on the type of crime).

**Stipulation** – a legal agreement.

**Superior Court** – the main county trial court.

**Telephonic Order** – an emergency protective order received at a police station, approved by a judge over the telephone.

**Temporary Court Order** – a court order which is to last for a set, limited amount of time.

**Temporary Protective Order** – a protective order which lasts for up to 30 days, or until the final hearing.

**Title IX Coordinator** – an individual appointed by a school district to investigate gender discrimination complaints.

**Tort Lawsuit** – a civil suit in which one sues another party for pain and suffering, or damages rendered.

**Uncontested Divorce** – a divorce where both parties are able to make a mutually agreed-upon arrangement.

**Undocumented Immigrant** – a person who has entered the U.S. without inspection or has entered lawfully and has overstayed his/her visa.

**Unwelcome** – conduct not wanted or not willingly permitted.

**Victim Compensation** – see **Compensation**.

**Victim Impact Statement** – statement that is prepared by a sexual assault victim prior to her or his court date.

**Victim/Witness Advocate** – advocates available through the prosecutor's office to assist victims with criminal processes.

**Visitation Center** – (also known as child access centers) are used by families where the parents are separated or divorced, and have difficulties exchanging the children due to domestic violence, sexual assault or substance abuse. These centers provide a neutral setting in which children can maintain contact with their non-custodial parents while focusing on the safety of all family members.

**Warrant** – a judicial writ authorizing an officer to make a search, seizure, or arrest or to execute a judgment.

**Writ** – legal action that a landlord can take if a notice to quit has expired and you have not left the premises.

**Writ of Possession** – authorizes your landlord to take possession of the property.

## **NEW HAMPSHIRE CRISIS CENTERS**

Statewide Domestic Violence Hotline: (1-866) 6443574

Statewide Sexual Assault Hotline: (800) 277-5570

TDD/VOICE: (800) 735-2964

### **A SAFE PLACE**

6 Greenleaf Woods, Suite 101

#### **Portsmouth, NH 03802**

(1-800) 854-3552 (Toll free crisis line)

(603) 436-7924 (Portsmouth crisis line)

(603) 436-4619 (Portsmouth Office)

18 North Main St.

#### **Rochester, NH 03867**

(603) 330-0214 (Rochester crisis line)

(603) 335-2631 (Rochester Office)

(603) 890-6392 (Salem crisis line)

[www.asafeplacenh.org](http://www.asafeplacenh.org)

### **NEW BEGINNINGS WOMEN'S CRISIS CENTER**

PO Box 622

#### **Laconia, NH 03247**

(1-866) 644-3574 (DV crisis line)

(1-800) 277-5570 (SA crisis line)

(603) 528-6511 (Laconia Office)

[help@newbeginningsnh.org](mailto:help@newbeginningsnh.org)

[www.newbeginningsnh.org](http://www.newbeginningsnh.org)

### **BRIDGES: DOMESTIC AND SEXUAL VIOLENCE SUPPORT**

PO Box 217

#### **Nashua, NH 03061-0217**

(603) 883-3044 (Nashua crisis line)

(603) 889-0858 (Nashua Office)

16 Elm St. Suite 2

#### **Milford, NH 03055**

(603) 672-9833 (Milford Office)

[director@bridgesnh.org](mailto:director@bridgesnh.org)

[www.bridgesnh.org](http://www.bridgesnh.org)

### **RAPE AND DOMESTIC VIOLENCE CRISIS CENTER**

PO Box 1344

#### **Concord, NH 03302-1344**

(1-866) 644-3574 (DV crisis line)

(1-800) 277-5570 (SA crisis line)

(603) 225-7376 (Concord Office)

[www.rdvcc.org](http://www.rdvcc.org)

### **RESPONSE TO SEXUAL AND DOMESTIC VIOLENCE**

54 Willow St.

#### **Berlin, NH 03570**

(1-866) 644-3574 (DV crisis line)

(1-800) 277-5570 (SA crisis line)

(603) 752-5679 (Berlin Office)

(603) 237-8746 (Colebrook Office)

(603) 788-2562 (Lancaster Office)

[response@ccfhs.org](mailto:response@ccfhs.org)

[www.coosfamilyhealth.org](http://www.coosfamilyhealth.org)

### **SEXUAL ASSAULT SUPPORT SERVICES (SASS)**

7 Junkins Ave.

#### **Portsmouth, NH 03801**

(1-888) 747-7070 (crisis line)

(603) 436-4107 (Portsmouth Office)

(603) 332-0775 (Rochester Office)

[info@sassnh.org](mailto:info@sassnh.org)

[www.sassnh.org](http://www.sassnh.org)

### **SEXUAL HARRASSMENT AND RAPE PREVENTION PROGRAM (SHARPP)**

University of New Hampshire

Verrett House, 6 Garrison Ave.

#### **Durham, NH 03824**

(1-866) 233-SAFE (7233) (crisis line)

(603) 862-3494 (Durham Office)

[www.unh.edu/sharp](http://www.unh.edu/sharp)

### **STARTING POINT: SERVICES FOR VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE**

PO Box 1972

#### **Conway, NH 03818**

(1-800) 336-3795 (crisis line)

(603) 356-7993 (Conway Office)

(603) 539-5506 (Ossipee Office)

[stopit@ncia.net](mailto:stopit@ncia.net)

[www.startingpointnh.org](http://www.startingpointnh.org)



**VOICES AGAINST VIOLENCE**

PO Box 53

**Plymouth, NH 03264**

(603) 536-1659 (crisis line)

(603) 536-3423 (shelter office)

(603) 536-5999 (Plymouth Office)

voicesagainstviolence@verizon.net

**SUPPORT CENTER AT BURCH HOUSE**

PO Box 965

**Littleton, NH 03561**

(1-800) 774-0544 (crisis line)

(603) 444-0624 (Littleton Office)

(603) 747-2441 (Woodsville Office)

scadvl@tccap.org

www.tccap.org/support\_center.htm

**MONADNOCK CENTER FOR VIOLENCE  
PREVENTION**

12 Court St.

**Keene, NH 03431-3402**

(1-888) 511-6287 (crisis line)

(603) 352-3782 (crisis line)

(603) 352-3782 (Keene Office)

www.mcvprevention.org

**WOMEN'S INFORMATION SERVICE  
(WISE)**

79 Hanover St., Suite 1

**Lebanon, NH 03766**

(1-866) 348-WISE (crisis line)

(603) 448-5525 (crisis line)

(603) 448-5922 (Lebanon Office)

wise.of.upper.valley@valley.net

www.wiseoftheuppervalley.org

**WOMEN'S SUPPORTIVE SERVICES**

11 School St.

**Claremont, NH 03743**

(1-800) 639-3130 (crisis line)

(603) 543-0155 (Claremont Office)

(603) 863-4053 (Newport Office)

wss@free-to-soar.org

www.free-to-soar.org

**YWCA CRISIS SERVICE**

72 Concord St.

**Manchester, NH 03101**

(603) 668-2299 (Crisis Line)

(603) 625-5785 (Manchester Office)

6 W. Broadway, #22

**Derry, NH 03038**

(603) 432-2687 (Derry Office)

ywcacs@aol.com

